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Human Rights Committee

# Fifth periodic report submitted by the Netherlands under article 40 of the Covenant pursuant to the optional reporting procedure, due in 2018*, **

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* The present document is being issued without formal editing.

** Annex I of the present document is being circulated in the language of submission only. Annex II is on file with the secretariat and is available for consultation. It may also be accessed from the Committee's web page.

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# A. General information on the national human rights situation, including new measures and developments relating to the implementation of the Covenant

**Answer to paragraph 1**

1. After the Committee has given its views on a communication brought before it, the relevant actors within the various ministries and other public offices are notified by the office of the Agent of the Government of the Kingdom of the Netherlands. If the Committee is of the view that a violation of the Covenant has taken place, all relevant actors at national level meet to assess the Committee's views and discuss the means to be deployed to comply with the Committee's views and obtain the necessary political approval from the responsible ministers. Primary responsibility for identifying and adopting possible measures lies with the authority that is competent with regard to the subject matter. Such measures can vary from individual measures (e.g. financial compensation) to general measures (e.g. the adoption of new policy guidelines or amendment of existing legislation). The Government Agent keeps the Committee informed of measures taken to implement the Committee's views.

2. The government informs the Dutch Parliament about the measures taken to comply with the views of the Committee, either through a specific communication or through the annual report on international human rights proceedings. This annual report is drawn up by the Government Agent and sent to Parliament by the Minister of Foreign Affairs.

**Answer to paragraph 2**

3. In amending or drawing up legislation, the government takes into account the provisions of the Covenant.

4. The government has produced a guide to economic and social rights to raise awareness of these rights among civil servants. The guide provides an initial broad overview of information on economic, social and cultural fundamental rights and is used in the drafting of policy and legislation. In this context, it provides government lawyers and policymakers with reference points enabling them to ascertain, in drafting and examining policy or legislation, whether these fundamental rights can or should be taken into account, and if so to what extent. This guide was incorporated into the model for the Integrated Assessment Framework. A more detailed version that is also wider in scope was prepared in 2016.

5. The guide will be evaluated, making it possible to see to what extent it has been successful in raising more awareness of social and economic rights among civil servants and how has been used in specific cases.

6. The provisions of the Covenant are also relied upon by parties before the national courts.[1]

# B. Specific information on the implementation of articles 1-27 of the Covenant, including with regard to the previous recommendations of the Committee

## Constitutional and legal framework within which the Covenant is implemented (art. 2)

**Answer to paragraph 3**

7. The Kingdom of the Netherlands wishes to maintain its reservations to the ICCPR. The reasons for making these reservations remain valid.

[1] See for example ECLI:NL:RBSGR:2010:BK9768; ECLI:NL:RBLEE:2011:BR4658; ECLI:NL:GHDHA:2017:535.

**Answer to paragraph 4**

*National Human Rights institution*

Aruba

8. Aruba is currently taking steps to draft a national human rights action plan. The plan is expected to be completed in the first half of 2018, after which it will be sent to the Aruban Council of Ministers for approval.

9. The government of Aruba made a commitment during the 2012 Universal Periodic Review to create an independent human rights institution based on the Paris Principles, similar to the one in the Netherlands. As the Aruban Parliament has announced that it will work towards the establishment of an Ombudsman and Children's Ombudsman in the near future, the Interdepartmental Human Rights Committee will examine the possibility of linking the human rights institute with these institutions. Draft legislation for the establishment of the Ombudsman and Children's Ombudsman is awaiting public debate.

Curaçao

10. The Ombudsman of Curaçao is working on establishing the Human Rights Institute (HRI) for Curaçao and aims to present the draft legislation to this effect to the Minister of General affairs in the second half of 2018.

*National Preventive Mechanism*

11. Following the entry into force of the Optional Protocol to the UN Convention Against Torture (OPCAT) on 28 October 2010, the Netherlands decided in 2011 on the designation of a National Preventive Mechanism under the OPCAT regime. It concluded that the bodies with a statutory duty to implement NPM tasks and exercise NPM powers (including access to institutions) should all continue to perform these tasks separately from one another. This system is effective and comprehensive. The NPM is an umbrella mechanism within which these organisations cooperate and share information where necessary, in order to draw attention to specific issues. The Inspectorate of Security and Justice plays a coordinating role.

12. The four NPM bodies issue a joint annual report. In recent years their cooperation has been strengthened in a number of ways, including the creation of a procedure for reporting serious incidents and violence in youth care institutions.

13. The government took steps to confirm the State Inspectorates' independence by setting out that independent position in new instructions. The Instructions concerning the State Inspectorates entered into force on 1 January 2016. This document sets out the rules governing a minister's authority to give instructions to a ministry's inspectorate and substantive limitations on that authority.

## Non-discrimination and prohibition of advocacy of national, racial or religious hatred (arts. 2, 20 and 26)

**Answer to paragraph 5 (a)**

14. Discrimination against individuals on the basis of language, ethnic origin and citizenship is prohibited by international conventions that are directly applicable in the Kingdom of the Netherlands, and by the Dutch Constitution, the Equal Treatment Act (AWGB), and a number of criminal and administrative law provisions.

**Answer to paragraph 5 (b)**

15. If someone is prosecuted for an offence which also involves discrimination, the Public Prosecution Service counts the discriminatory aspect as an aggravating factor when deciding what sentence to recommend. Discrimination is defined as an aggravating factor warranting a 100% increase in the recommended sentence in cases involving serious criminal offences motivated by discriminatory factors.

16. The framework for investigation and prosecution is set with guidance from the Board of Procurators General.

**Answer to paragraph 5 (c)**

17. The traditions accompanying the celebration of the feast of Saint Nicholas are continually evolving. The government shares the view of the Netherlands Institute for Human Rights that a ban on Black Pete by central government is not an appropriate solution. However the government supports initiatives that enhance and facilitate a respectful dialogue. Against this background, the Minister of Social Affairs and Employment has organised several roundtable sessions. Debate is ongoing in many local communities on how the feast of Saint Nicholas should be publicly celebrated. Over the last few years there have also been changes in Black Pete's appearance.

**Answer to paragraph 6 (a)**

18. The government strongly condemns discrimination and takes tough measures to combat expressions of a discriminatory nature. Measures to combat discrimination against migrants are outlined in the National Action Plan against Discrimination, which deals with all forms of discrimination but more specifically with anti-black discrimination, anti-Muslim discrimination and anti-Semitism.

19. The National Action Plan includes over 40 measures in four main areas. First, the government is committed to preventing discrimination by raising awareness of discrimination and unconscious bias; measures include citizenship education in schools and a multi-annual national campaign focusing on schools, employers and football clubs. Second, it aims to improve cooperation among relevant actors, such as the police, the local discrimination bureaus, local communities and the Public Prosecution Service. Third, the government works to raise awareness at local level by making guidelines and handbooks available and fostering information exchange. Finally, it invests in research into the scope and impact of exclusion and discrimination; examples include a recurrent study on experiences of discrimination, last conducted in 2017.

20. Furthermore, specific measures to combat discrimination against migrants are also incorporated in the Action Plan against Labour Market Discrimination. The 48 measures that make up the plan include a Diversity Charter promoting an inclusive working environment that has been signed by all government ministries and 80 employers.

21. The government has further implemented specific measures to combat anti-Semitism, anti-Muslim discrimination and anti-black racism developed in close partnership with the various (migrant) communities and active citizens.

**Answer to paragraph 6 (b)**

22. The Netherlands strongly condemns hate speech. The National Action Plan against Discrimination referred to above provides a policy for tackling all forms of violence with a discriminatory motive (hate crime), including crimes committed against anyone on grounds of race or ethnicity. The Action Plan was presented to the House of Representatives in January 2016.

23. An agreement between the police and the Public Prosecution Service containing antidiscrimination provisions was signed in July 2017.

**Number of hate crimes**

| *Year* | *Hate crimes recorded by police* | *Prosecuted* | *Sentenced* |
|---|---|---|---|
| 2016 | 4,376 | Not available | Not available |
| 2015 | 5,288 | Not available | Not available |
| 2014 | 5,721 | 133 | 87 |
| 2013 | 3,614 | 83 | 89 |
| 2012 | 3,292 | 114 | |
| 2011 | 2,802 | 169 | |
| 2010 | 3,538 | 170 | 90 |
| 2009 | 2,212 | 160 | 135 |

*Source:* http://hatecrime.osce.org/netherlands

*Vigorous measures to combat racism*

24. The government believes that high-quality education helps promote equal opportunities and social integration. It is committed to promoting integration by focusing on the quality of education. This means investing in teachers, and taking measures to prevent schools failing and pupils leaving school early. The government's education policy is designed to ensure that every child can develop their potential to the full.

25. Discriminatory chants at football games are unacceptable. Where such incidents occur, clear and immediate intervention is called for. Tackling hate speech and discrimination is a shared responsibility of all the partners involved, both at local and national level (football clubs, the Football Association, local government, police and the criminal justice authorities). The Dutch Football Association and the Public Prosecution Service can and will take action in the case of hate speech and discrimination in football. In such cases the public prosecutor reviews the events in question to see if there is enough evidence to prosecute. Criminal proceedings are possible even if the victim does not lodge a complaint with the police.

**Answer to paragraph 7**

*Combating ethnic profiling*

26. The government is already working actively to prevent ethnic profiling and has taken vigorous measures to this end. First, it has focused on raising awareness through training and education. It has also set in motion activities aimed at connecting people, further improving the complaints procedure, increasing diversity in the police organisation (at all levels), drafting a code to improve the selection process, and finally strengthening expertise within each team focused on implementing proactive inspections. This is supported by a range of ICT innovations to enable police officers to find relevant information (including previous questioning by police) by entering a name or number plate in the system (MEOS). This helps foster more intelligence-led policing. Finally, an accessible app for notifications, complaints and information on police stops has been developed.

27. To achieve all of the above, the police have launched the De Kracht van het Verschil (The Power of Difference) programme.

*Racial disparities*

28. No additional measures have been taken to address racial disparities in the criminal justice system. People with a non-Western migrant background are over-represented in the crime figures by a factor of 2 to 3 (the number of persons arrested per 10,000 residents compared with the same number among ethnic Dutch people). Within that group, people with a Surinamese background (by a factor of 3 to 3.5) and young men of Moroccan origin (by a factor of 3 to 4) score the highest. However, a steep decline has occurred in the latter group (source: Statistics Netherlands StatLine). Part of this over-representation can be explained by the relatively poor socioeconomic position of these groups.

**Answer to paragraph 8 (a)**

29. In response to the Social and Economic Council (SER) advisory report entitled Discriminatie werkt niet! (Discrimination doesn't work!) of 25 April 2014, the government presented an action plan on labour market discrimination, setting out specific steps to tackle this issue. Information and awareness are key issues in the action plan. One of the principal measures is the Diversity Charter in which the unions and employers' organisations participate. By signing the Charter, organisations commit themselves to an active focus on inclusion and diversity in the work environment. Committed organisations formulate their own goals in their action plans. All government ministries have signed the Diversity Charter. Examples of measures taken include the provision of workshops on 'selection without prejudice' and advice on tapping into alternative recruitment channels.

**Answer to paragraph 6 (b)**

*Multi-annual campaign*

30. The Action Plan against Labour Market Discrimination contains specific measures to combat discrimination against migrants. The 48 measures set out in the Action Plan include the Diversity Charter promoting an inclusive working environment, which has been signed by all government ministries and 80 employers.

31. In 2016 a government campaign on labour market discrimination in the recruitment and selection phase started, as part of a multi-annual campaign. The campaign targets discrimination based on gender, age, origin, disability and sexual orientation. The purpose of the campaign is to persuade employers (directors, managers, HR advisers and recruiters) to acknowledge that everyone may have prejudices that operate at an unconscious level and to inform them of ways to set up the application process so that prejudice plays less of a role or none at all. The impact study conducted by survey agency TNS NIPO showed that the campaign was successful in terms of communication and was evaluated positively by the target group. A majority of employers seem to be aware that they may have unconscious prejudices that influence the recruitment and selection process. The campaign will be repeated in the second half of 2017.

32. Under the Participation Act, municipalities have a number of new instruments at their disposal to enable persons with disabilities to get a job; these include the wage subsidy and the provision of sheltered work. Other instruments such as job coaching, trial placement and education are also available. Meanwhile, the employers' organisations and the trade unions have committed themselves to raising annual targets for the recruitment of workers with disabilities in the public and private sectors (125,000 by 2026). Each year, the results of this agreement are monitored. If employers do not succeed in achieving the agreed number of jobs, a quota system comes into force, under which individual employers risk a fine.

*The Civic Integration Abroad Act*

33. In 2013 the Civic Integration Abroad Act was amended. Anyone who fails to pass the civic integration exam through their own fault can be fined. If they are not at fault, the requirement to pass the exam can be lifted or the period within which the exam must be done can be extended. Their residence permit can be revoked only if this does not conflict with national and international legislation. For this reason, the rules do not apply to asylum permit holders. In other cases, a residence permit may not be revoked if this would be incompatible with Council Directive 2003/86/EC on the right to family reunification or article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

34. The Civic Integration Abroad Act was amended following a ruling of the Court of Justice of the European Union of 9 July 2015. The grounds for exemptions have been modified. Exemption from the obligation to pass the test is now possible on the grounds of specific individual circumstances. Additionally, the fees for the different parts of the exam have been reduced.

## Violence against women, including domestic violence (arts. 2, 3, 7, and 26)

**Answer to paragraph 9**

35. Each year around 220,000 adults in the Netherlands are subjected to serious and sustained violence in their domestic environment, while around one million adults experience one-off incidents of domestic violence. In nearly 75% of cases of known domestic violence, the victims – the majority of whom are women – are physically or sexually abused. Although more men experience violence than is often thought, more women (60% of cases) than men (40%) are abused. Since 2002, there has been a nationwide policy in place to prevent domestic violence, including violence against women. The ultimate aim has remained the same: to reduce the prevalence and severity of domestic violence.

36. Domestic violence in the Caribbean Netherlands is unfortunately a common phenomenon. Domestic violence and child abuse are closely linked to difficult social conditions on Bonaire, St Eustatius and Saba. Incidents of domestic violence are not properly registered on the three islands. Police records do not give a clear picture of the problem and willingness to report domestic violence is low. In March 2015 a community safety partnership known as a 'Safety House' (veiligheidshuis) was launched on Bonaire. Partners in the criminal justice system, including the police, the public prosecutor and the probation services, work together with the Guardianship Council, and institutions in the field of health and youth care, welfare, education and social affairs, on cases involving elements of both care and safety, such as domestic violence and child abuse. The functioning of the safety partnership on Bonaire will be evaluated. If its approach proves to be effective, it may be extended to St Eustatius and Saba.

37. The Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention) will apply in due course in the Caribbean Netherlands. On the basis of an exploratory study in 2014 and recent activities on the islands, the European and Caribbean Netherlands have signed an administrative agreement covering the period 2017 – 2020. The goal is to strengthen policy on combating domestic violence. The agreement focuses on the following priorities: prevention, learning skills for professionals, strengthening the support system (including safe shelters) and developing an accessible reporting structure. Concrete plans of action based on the agreement are being developed.

Curaçao

38. Curaçao has taken a large number of policy and legal measures to combat domestic violence. In 2016, the police unit dealing with relationship abuse received 192 notifications, and in 2017 (up to October) 208.

39. One example of such efforts is the numerous activities of the victim support foundation (Stichting Slachtofferhulp Curaçao) during the reporting period. Information is being provided to clients, employees and schools, and the last group in particular have asked the foundation to assist them in giving information to students and teachers. In addition, the foundation has published articles on this topic with the goal of raising awareness.

40. As part of its efforts to combat domestic violence, the Ministry of Justice announced in 2015 that it had designated November as 'domestic abuse awareness month'. Conferences and awareness campaigns now take place in November each year. The Ministry of Justice focuses on this topic in a twice-weekly radio programme. The Curaçao victim support foundation also provides information, as part of their awareness plans, via the Ministry's radio programme.

41. The Curaçao government has a policy in place to tackle sexual harassment, and has set up a procedure for reporting violations. Sexual harassment complaints must first be lodged with the police. The victim support foundation and the registration and referral centre for child abuse (Centraal Meldpunt Kindermishandeling; CMK) provide support to victims, in particular children, while psychologists are available to provide assistance.

42. An instruction on domestic violence has been in place since the 1st of July 2017. This instruction defines domestic violence as violence that happens within the family or relationships, regardless of where it takes place. This will ensure a more uniform way in handling domestic violence cases by the public prosecutor and police. The instruction also provides for treatment to both the victim and the abuser. Child abuse

43. The relevant ministries within the Curaçao government are developing a reporting code for child abuse. The ultimate aim of this collaboration is to create a uniform way of reporting child abuse. In recent years the custody bureau has invested in various legal training courses, discussions of case studies and multidisciplinary consultations.

Legal

44. Curaçao's revised Criminal Code (Wetboek van Strafrecht) contains special provisions concerning minors younger than 16 and human trafficking. Under article 26 of the Curaçao Constitution, the government is required to protect the family and to take measures to promote healthy family life. Under article 27, it is the duty of the government to protect young people.

45. Curaçao's revised Criminal Code stipulates that where (serious) assault is committed with premeditation, or serious bodily injury is intentionally caused to another person, the maximum sentence may be increased by a third if the victim of the offence is the offender's mother, father, spouse or partner, a child for whom they have parental responsibility or a child whom they are caring for and raising as a member of their family. As an additional sanction the court may impose a restraining order barring the offender from entering certain parts of the island (gebiedsverbod). A restraining order prohibiting contact with the victim (contactverbod) may also be imposed by the court for other forms of assault.

46. Book 1 of the Civil Code has been amended pursuant to the National Ordinance on the introduction of the central registration and referral centre for child abuse (Centraal Meldpunt Kindermishandeling, CMK).

47. On 28 and 29 May 2012 the National Alliance, an NGO working to combat child and domestic abuse, held a national dialogue in which government officials, policy advisors and other stakeholders participated. In October of the same year, the government adopted a national decree establishing the National Committee for the Prevention of Domestic Violence and Violence against Children and Young People. The Committee's remit is to work on a policy paper and on the development and implementation of legislation on combating child abuse and domestic violence. The Committee consists of the Minister of Justice, the Minister of Education, Science, Culture and Sport, the Minister of Health and the Minister of Social Development, Labour and Welfare, as well as three representatives of the NGO.

48. Finally, the law penalises sexual harassment and is enforced effectively. The most recent legislative development is a proposal to further define the act of sexual harassment and the penalties it carries. Draft legislation to this effect was recently presented to Parliament.

## Counter-terrorism measures (arts. 4, 7, 9, 10, 14, 17, 18, 19 and 26)

### Answer to paragraph 10

49. These non-punitive measures are all aimed at combating the terrorist threat and preventing radicalism. The government is of the opinion that the legislation containing these measures is clearly and precisely formulated and that the criteria for their application meet the requirements of the ICCPR. During the passage through Parliament of the Counterterrorism (Interim Administrative Measures) Bill, the government referred explicitly to the fundamental rights guaranteed by the Convention.[2] The fact that the European Court of Human Rights (ECtHR) grants the member states a certain margin of appreciation where measures to protect national security are concerned is also of relevance here. Not every act or behaviour that presents a risk to national security can be predicted or defined in advance. The requirement of necessity is an important safeguard ensuring that the criteria for deciding

[2] See for example Parliamentary Papers, House of Representatives 2015/16, 34359, no 3.

whether on the basis of their activities a person can be connected to terrorist activities or support for them are not frivolously invoked. Whenever a decision is made that limits a person's freedom of movement, the need to protect national security must be demonstrated. Such a measure will only be resorted to in exceptional circumstances.

50. Extra safeguards over and above the usual remedy of review by the administrative courts are provided in the context of counterterrorism legislation. For example, if a person's Dutch nationality is revoked on the grounds that they have joined a specified terrorist organisation abroad (Bill amending the Netherlands Nationality Act in connection with the revocation of Dutch nationality in the interests of national security), judicial review of that decision is guaranteed. Another example is the elimination of the objection stage, so that a court decision on the measures taken can be obtained as quickly as possible.

51. The government points out that decisions made by government bodies that constitute an interference in the private lives of citizens can be challenged before the administrative courts. This is also the case where decisions are fully or partly based on official reports by the General Intelligence and Security Service (AIVD). Admittedly, in such cases it is not always possible to make public the information from the AIVD on which the decision is based or to share it with the person concerned, either partially or in full. This is to avoid jeopardising the activities and operational methods of the intelligence and security services or the safety of sources. However, this does not mean it is impossible to challenge government measures. The General Administrative Law Act (Algemene wet bestuursrecht; AWB) provides for a specific procedure concerning the way in which confidential information is made available in court proceedings (section 8:29 AWB). Parties may refuse to provide confidential information on the grounds of compelling reasons, including national security, or may stipulate that it can only be shared with the court. If the court decides that restricted access to the information is justified (this is therefore subject to judicial scrutiny), it must have the consent of the other parties to give judgment on the basis, fully or partially, of the information in question. This provision seeks to strike a balance between the disadvantage suffered by the person concerned (in that they are unable to access confidential information on which certain government measures are based), and the compelling reasons which may prevent such information being disclosed to them. In light of the above, the government is of the opinion that citizens have sufficient legal remedies to oppose certain government measures and that legal protection in general is effectively safeguarded.

52. Any risk of counterproductive effects or undesirable side effects, such as an increase in social tension, polarisation and alienation would arise primarily if these counterterrorism measures were applied on a large scale. However, they will in fact be applied on an incidental and narrowly targeted basis.

**Answer to paragraph 11**

*Intelligence and Security Services Bill*

53. The new Intelligence and Security Services Act provides a modernised framework for the activities of the intelligence and security services while simultaneously strengthening the safeguards under which the special powers of the services may be exercised. These safeguards have been amended. Strict criteria apply to authorisation requests. In particular, the necessity, proportionality and subsidiarity of the special power whose use is requested must be demonstrated; authorisation to exercise almost all special powers is granted for a maximum of three months with the possibility of renewal after a second assessment of their lawfulness; the retention period for data collected through the exercise of special powers is set at twelve months; the data collected should be examined as soon as possible for relevance and irrelevant data should be destroyed. In the case of interception of bulk data, the Act allows for a one-year authorisation period and a maximum retention period of three years. For the use of special powers vis-à-vis lawyers and journalists, which may affect attorney-client privilege or reveal the identity of a journalist's source, authorisation must be sought from the courts. In addition, a prior test of the lawfulness of ministerial authorisation where the use of the most intrusive special powers is concerned has been introduced. This will be carried out by a new independent committee (Toetsingscommissie Inzet Bevoegdheden), whose findings are binding. Furthermore, the new Act provides for the introduction of an

independent complaints facility that delivers binding decisions. Cooperation with foreign intelligence and security services, including the exchange of data, is subject to a prior assessment of the relevant service in light of a number of statutory criteria. This includes the democratic embedding of the relevant service, respect for human rights in the country concerned, the professionalism, reliability and statutory powers of the service and the level of data protection it can provide. This assessment determines whether a collaborative relationship can be entered into and, if so, what the nature and intensity of that relationship is (for example, whether data can be exchanged). The decision lies in principle with the minister.

*@MIGO-BORAS*

54. @MIGO-BORAS stands for Mobile Information-driven System for a Better Operational Result and Advanced Security. The system provides technical support to mobile surveillance operations conducted by the Royal Military and Border Police (Koninklijke Marechaussee; KMAR). As its name suggests, the system aims to provide better intelligence for police operations and thereby improve efficiency and effectiveness. The timing, duration and frequency of controls fall within the framework of law under the Schengen Borders Code and the case law of the Court of Justice of the European Union.

55. @MIGO-BORAS has three main functions:

- To collect anonymous data for analysis and the construction of traffic profiles;
- To observe vehicles and select those to be stopped and searched on the basis of that analysis and;
- To respond to quick alerts in situations where there has been a serious or large-scale breach of the legal order, or public disorder or in the interests of emergency assistance.

56. For immigration law purposes, anonymous data will be used only for the first two functions (analysis and surveillance). The stored data will not be traceable to individuals. Any data traceable to individuals will be encrypted before being processed. In case of the third application (quick alerts), the data in question can be traceable to individual motorists, since in an emergency situation one or more specific number plates will be searched for. This interference with the right to privacy is proportionate to the legitimate aim pursued, i.e. investigating and preventing serious criminal offences. Furthermore, strict criteria have been laid down as to who may access the data and under what conditions.

57. With regard to the question of transparency, the government would point out that signs along the road at the border already inform motorists in Dutch and English that the @MIGO-BORAS system is in operation. The Act on the recording and retention of number plate information by the police (33.542)[3] regulates the retention of information concerning the number plates of vehicles passing any camera on the public highway. The Act contains strict conditions and all necessary safeguards. Information obtained by the @MIGO-BORAS cameras will be subject to the same conditions and safeguards. Article 126jj of the Code of Criminal Procedure explicitly states that motorists must always be clearly warned that automatic number-plate recognition cameras are in operation. Every year the police and Royal Military and Border Police draw up a plan regarding camera use, which is published in the Government Gazette (Staatscourant) and online at Overheid.nl. The installation and use of cameras is subject to strict rules contained in an implementing order.

*Blanket data retention*

58. The government assumes that this question refers to the amendments to the Telecommunications Act and the Code of Criminal Procedure in connection with the retention of data processed for the purpose of providing public telecommunication services and public telecommunication networks (amendments regarding the duty to retain telecommunications data). Following a further judgment of the Court of Justice of the European Union, the government is reviewing the bill in question.

[3] The Act was passed on 21 November 2017 and is expected to enter into force on 1 July 2018.

## Right to life and prohibition of torture and other cruel, inhuman or degrading treatment or punishment (arts. 6 and 7)

### Answer to paragraph 12

*Termination of life on request and assisted suicide*

59. In its 2009 recommendations the Committee urged the Netherlands to provide for 'prior judicial review' before a physician terminates life on request or assists in suicide. In response to this recommendation the government would emphasise that the practice of termination of life on request and assisted suicide in the Netherlands is subject to stringent due-care criteria. The Netherlands shares the Committee's view that it is essential for any request for euthanasia or assistance with suicide to be voluntary and well-considered. This view also informs Dutch legislation and practice.

*Procedure*

60. A physician who agrees to perform euthanasia at the request of the patient, must be sure that the six due-care criteria enshrined in the Termination of Life on Request and Assisted Suicide (Review Procedures) Act have been complied with. For example, he must be satisfied that the request is voluntary and well-considered and that the patient's suffering is unbearable and without prospect of improvement. The physician must also have informed the patient of his/her situation and prognosis and have come, together with the patient, to the conclusion that given the patient's situation there is no reasonable alternative. The physician further has a statutory duty to ask an independent physician to ascertain whether the due criteria have been met. The sixth due-care criterion is that the physician must exercise due medical care and attention in carrying out the procedure.

61. The municipal pathologist then performs an external post mortem examination, collects and checks the necessary documentation and sends it on to the relevant regional euthanasia review committee. The committee, consisting of a lawyer (who chairs the committee), a physician and an ethicist, decides whether all the due-care criteria have been met. If the committee requires additional information, it will if necessary invite the physician who performed the procedure to explain his report in person. Should the review committee reach the conclusion that the due-care criteria were not met, the case is reported to the Public Prosecution Service and the Healthcare Inspectorate. Each body then conducts its own investigation.

*Evaluation*

62. In 2017 the Act was evaluated for the third time (Onwuteaka-Philipsen, et al., 2017). The conclusion was that the aims of the Act were being achieved. Debate in the evaluation period (2012-2016) concerned not so much the content of the Act, but rather public and professional support for certain practices falling under its purview.

63. The evaluation contained a number of recommendations. They mainly involved practical issues, such as steps to reduce the review committees' workload and reduce the time taken by the Public Prosecution Service (OM) to examine reported cases, the need for more research and measures to improve communication to and between physicians and members of the public. The evaluation provided no grounds for considering the introduction of prior judicial review as recommended by the Committee in 2009.

### Answer to paragraph 13

64. To prevent as many unaccompanied minors as possible from going missing, they are generally subject to intensive supervision. The care they receive is aimed at increasing their knowledge, skills, and assertiveness, and at providing them with alternative prospects.

65. As soon as unaccompanied minors enter the Netherlands or are discovered by the authorities to be in the country without residence permits, they are transferred to a specialised application centre where the police, the Immigration and Naturalisation Service (IND) and the NIDOS Foundation have representatives. When unaccompanied minors enter Dutch

territory NIDOS assumes responsibility for them and submits a guardianship application to the court. NIDOS is authorised to represent the minor's interests during the asylum procedure, possibly with the assistance of a lawyer. During the intake interview, an initial assessment is made of the risk that the unaccompanied minor will abscond or otherwise evade supervision. On the basis of this assessment, NIDOS may decide to place the minor in protected reception.

66. A national protocol has been drawn up for missing unaccompanied minors. All relevant parties – including the Central Agency for the Reception of Asylum Seekers (COA), NIDOS and the police – must work in accordance with this protocol. At the start of the procedure the police KMAR take the minor's fingerprints. If a child disappears, these measures make it possible to trace him/her quickly on the basis of data already collected. The protocol stipulates that the police must take action in all cases where it is not known whether the minor is in a safe situation (for example staying with family). Disappearances are also reported by the National Rapporteur on Trafficking in Human Beings.

67. The KMAR and police are informed immediately in cases concerning a missing unaccompanied minor. Within 24 hours, the organisations concerned provide them with all the specific details of the case and information concerning possibly suspicious situations. In the event of a report of a missing person, the relevant agencies react immediately. The police draw up an official report, question witnesses and conduct forensic and other investigations, check details and file information, and, where applicable, issue a national or international alert in respect of the missing unaccompanied minor.

**Answers to paragraph 14**

68. The Termination of Pregnancy Act (1984) also applies to Bonaire, Saba and St Eustatius. Under the Act, hospitals and clinics must be licensed to perform the procedure. The hospital on Bonaire has a licence and works with a number of general physicians on the island. In March 2016 the licence was extended to include a number of general physicians on Saba. All necessary measures are taken to ensure that women have access to safe and good care with regard to termination of pregnancies.

## Liberty and security of person and treatment of persons deprived of their liberty (arts. 7, 9 and 10)

**Answers to paragraph 15 (a)**

69. On 1 March 2017 the Code of Criminal Procedure was amended to implement Directive 2013/48/EU.[4]

70. Previously, the relevant provisions stipulated that the police would inform a family member or someone living under the same roof as soon as possible if a person had been deprived of their liberty. What has changed is that it is now the detained person who gives the name of the person they wish to be notified. Such notification may be delayed if this is justified by an urgent need to avert serious adverse consequences for the life, freedom or physical integrity of a person or to prevent the likelihood of the investigation being substantially jeopardised.

71. Limitations on a suspect's right to indicate who should be informed of their detention are almost always imposed in cases where it is necessary for co-suspects to remain unaware of the suspect's detention.

72. The condition laid down in the Directive that derogations to the right of notification must be temporary and limited in time is transposed into the Code by providing that delaying notification is possible 'to the extent that and for as long as' an urgent need exists on one of the grounds set out above (see article 27e, paragraph 3 of the Code of Criminal Procedure.

[4] Directive 2013/48/EU of the European Parliament and of the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty (OJ L294).

73. To implement the Directive, a new article (488b) applying to minors who have been arrested was added to the Code of Criminal Procedure. Paragraph 1 of this article provides that the assistant public prosecutor hearing the minor informs his/her parents or guardian of the arrest as soon as possible. Notification in the case of minors may also be delayed, but this happens only in highly exceptional circumstances.

**Answer to paragraph 15 (b)**

*Role of the lawyer*

74. A lawyer is entitled to be present at and to participate in police questioning. The lawyer can request an interruption to allow for consultation with the client. The lawyer can ask questions or make comments directly after the beginning and directly before the end of questioning.

75. Furthermore the lawyer is entitled to point out to the officer conducting the interview that the suspect doesn't understand a question, that he is exerting undue pressure on the suspect or that the physical or mental state of the suspect is such that continuing the interview would be irresponsible.

76. If the lawyer exceeds his/her legal remit and has been warned at least once without result by the officer conducting the interview, the assistant public prosecutor can order him/her to leave the interview room.

*Remuneration*

77. Lawyers working in the legal aid system receive a flat-rate fee based on a points system for attending one or more interviews of arrested persons in the phase following arrest up to being brought before the examining magistrate. In the case of a criminal offence for which pre-trial detention may be imposed, this phase may last no longer than three days and 18 hours. Where the person is suspected of committing extremely serious criminal offences (known as category A cases: offences carrying a sentence of 12 years or more, offences involving death or serious bodily injury to the victim, and serious sex offences) the fee is equal to three points.[5] Where a person is suspected of committing an offence for which pre-trial detention may be imposed but which does not fall under category A, the fee is 1.5 points. Those suspected of offences for which pre-trial detention is not permitted must themselves meet the costs of legal assistance during police questioning. Legal assistance during questioning once the suspect has been brought before the examining magistrate and thereafter falls under the automatic assignment of counsel if an order for pre-trial detention is made.

**Answer to paragraph 15 (c)**

78. In the case of category C offences,[6] free legal assistance prior to police questioning is also provided to vulnerable suspects, including minors and adult suspects who have an intellectual disability or suffer from mental illness. This is the result of an amendment to the Code of Criminal Procedure that came into force on 1 March 2017, stating that vulnerable adult suspects who have been arrested can only waive their right to consult counsel prior to police questioning if they have been informed by a lawyer of the consequences of such a decision. Minors may never waive their right to access to a lawyer prior to questioning, whatever the seriousness of the offence. The government therefore considers it reasonable to provide legal aid in such circumstances. The costs of legal assistance during questioning must be met by the suspect in category C cases.

**Answer to paragraph 15 (d)**

79. Minor suspects between the ages of 12 and 17 are entitled to have counsel present during questioning by the police or another investigating officer. However, the presence of counsel is not mandatory. The assumption is that the minor suspect and his/her counsel will

[5] One point represents €105.61 for an average of one hour's work.

[6] Category C cases involve minor offences and offences for which pre-trial detention may not be imposed.

discuss during the mandatory period of access to a lawyer prior to questioning whether counsel's presence during the interview itself is necessary. If minor suspects indicate that they do not want a lawyer to be present during questioning, their parents or guardian can decide that this is nevertheless necessary. With regard to the question of the extent to which legal assistance during the interview of a minor is free, the government would refer the Committee to its answer under b).

**Answer to paragraph 15 (e)**

80. Because there are no lawyers established on Saba and St Eustatius, legal aid there is provided by lawyers from St Maarten. As of 1 January 2016 the fees lawyers receive for providing legal aid on Bonaire, Saba and St Eustatius have been increased. Lawyers also receive an allowance for travel expenses if they have to provide legal aid on Saba or St Eustatius.

**Answer to paragraph 16 (a)**

81. Under juvenile criminal law there is a statutory duty to suspend pre-trial detention unless there are compelling reasons for imposing it. Such detention is used only as a last resort. If an order for pre-trial detention is made, the court must examine whether it can be suspended so as to avoid, if possible, placement in a young offenders' institution. One of the options available to the court is 'night detention', a special form of pre-trial detention for minors. In this way, the minor concerned can continue to attend school or go to work on weekdays, and in the evening and at weekends he or she returns to the institution.

82. The aim of this form of detention is to reduce the damaging consequences of pre-trial detention and to maintain and reinforce positive ties with society. To be eligible, minors must meet a number of conditions.

- They must spend the time outside the institution in a structured and meaningful way (i.e. school, work, attendance at an institution offering day treatment or a combination of these);
- The location where the minor spends the day must be near the young offenders' institution, in order to facilitate travel;
- To ensure that pre-trial detention proceeds smoothly, minors must sign a contract stating that they agree to the conditions.

83. Suspension of pre-trial detention is governed by the general conditions laid down in article 80 of the Code of Criminal Procedure. One of these is that the suspect is obliged to cooperate if the suspension is lifted.

84. The children's judge may also attach special conditions to suspension, having sought the advice of the Child Protection Board (article 493 of the Code of Criminal Procedure). The special conditions are laid down in detail in an order in council. One example is the requirement that minors must follow the instructions of the organisation providing probation services. Since the minors in question are at the pre-trial detention stage and have therefore not yet been convicted, the presumption of innocence applies. This means that the conditions may not be too burdensome and that the suspect's consent is always required.

85. Between 2012 and 2016 the number of young people being held in pre-trial detention in young offenders' institutions fell from 1,581 in 2012 to 1,243 in 2016. The average duration of detention was 34 days.

**Answer to paragraph 16 (b)**

86. The courts determine whether there are grounds for pre-trial detention. In response to recommendation 12, the application of pre-trial detention in the Netherlands is discussed in greater detail below.

**Answer to paragraph 16 (c)**

**Aruba**

87. Article 100 of Aruba's Code of Criminal Procedure lists the situations in which pre-trial detention can be imposed. Only in such cases can people be remanded in custody, and this must serve the interests of the investigation.

88. In Aruba court orders imposing pre-trial detention are substantiated in writing and based on the grounds listed in article 101 of the Aruban Code of Criminal Procedure, as they apply to the individual in question. If a suspect is remanded in custody (and when custody is extended) and subsequently detained by court order (and when the order is extended), he/she is brought before the examining magistrate, who assesses whether the grounds cited for the imposition of the order (for remand in custody or for detention/extensions) are justified. All decisions regarding custody require that the suspect be heard with counsel present. The suspect or counsel can challenge a court order for detention and subsequently lodge an appeal. It is thus possible to challenge pre-trial detention at two instances: before the examining magistrate in the case of remand in custody and court order for detention, and before the Joint Court of Justice if the defence lodges an appeal.

89. In Aruba, after a suspect has been detained for questioning (maximum six hours), the public prosecutor or assistant public prosecutor is empowered to remand him/her in police custody for a maximum of two days (article 83 and article 87, paragraph 1 of the Aruban Code of Criminal Procedure). This may be extended by the public prosecutor for a maximum of eight days (article 87, paragraph 2 of the Aruban Code of Criminal Procedure).

90. Following remand in police custody, suspects may be remanded in custody by the examining magistrate for a maximum of eight days (article 92 and article 93, paragraph 1 of the Aruban Code of Criminal Procedure). This period can also be extended by a maximum of eight days (article 92 and article 93, paragraph 2 of the Aruban Code of Criminal Procedure).

91. Finally, suspects may be detained by court order for a maximum of 60 days (article 95 and article 98, paragraph 1 of the Aruban Code of Criminal Procedure). This period may be extended twice for a maximum of 30 days (article 98, paragraphs 3 and 4 of the Aruban Code of Criminal Procedure).

92. The total period may not exceed 146 days. After this, the case must be brought before the court. This maximum period ensures that the suspect's case is heard by the court. Restrictive use is made of the various measures.

(i) A person between the ages of 12 and 17 who is suspected of having committed a criminal offence may be arrested by the police or other investigating officer and taken to a police station for questioning. Depending on the offence in question, they may be held at the police station for a maximum of three days and 18 hours.

93. If it is necessary to hold a suspect for longer, he/she must be brought before the children's judge.

(ii) The amendments to legislation extending the grounds on which pre-trial detention may be imposed entered into force on 1 January 2015. This fairly limited extension makes it possible to hold persons suspected of certain specific offences in pre-trial detention with a view to a speedy prosecution within the time limit for remand in custody by order of the examining magistrate (a maximum of 14+3 days). The courts determine whether there are grounds for pre-trial detention.

94. With regard to Aruba, the new Criminal Code contains a provision on alternative sanctions (article 1:169). This is a separate sanction (maximum 480 hours) that can be imposed to reduce the use of pre-trial detention. This is a non-custodial sentence which, if applied in combination with article 101, paragraph 3 of the Aruban Code of Criminal Procedure in anticipation of the court's judgment, can reduce the length of pre-trial detention.

95. Another measure to reduce the use of pre-trial detention, particularly in the case of minors, is conditional suspension. The conditions include supervision by probation officers, a restraining order forbidding contact with the victim, a drink-drive rehabilitation course or

an anger management course. The Public Prosecutor's Office and defence counsel submit recommendations regarding the use of conditional suspension.

96. Finally, pre-trial detention is only possible if there are grounds to justify its imposition, or genuine reasons to detain the suspect. The grounds include the following: the offence is one carrying a sentence of more than six years; the offence is an affront to the legal order, there is a risk of reoffending or the interests of the investigation are at stake.

97. Generally speaking, the legislation guarantees the restrictive use of pre-trial detention. Aruba has only one remand centre, and it has limited capacity (14 places available, consisting of 2 places for adult women, 9 places for minors and 3 places for adult men). As a result, limited capacity is another factor compelling the Public Prosecutor's Office to be selective in imposing pre-trial detention.

**Curaçao**

98. Pre-trial detention is used as a last resort and the correct and lengthy procedures are followed before imposing a long period of pre-trial detention.

99. Minors who break the law will be deprived of their liberty if they have committed a serious criminal offence or if they are repeat offenders. The maximum duration of youth detention is explicitly stated in the Criminal Code. The most severe sentence that may be imposed under juvenile criminal law is two years' youth detention or, in serious cases, four years' youth detention. These sentences can be imposed on 16 and 17 year-olds and on individuals above the age of 18 who had not yet reached the age of 21 at the time of the offence. The maximum fine that may be imposed under juvenile criminal law is ANG 5,000.

100. The Criminal Code also lays down explicit conditions concerning placement in a youth protection and custody institution, including the maximum duration of such a placement, extension of the order, and the possibility of appeal. A court may order placement following a signed, dated recommendation to this effect from one or more behavioural experts who have examined the individual in question, stating the grounds on which the recommendation was made, and only if the following cumulative conditions are met. The offender must have committed an offence for which pre-trial detention is permitted; the safety of others or the general safety of individuals or property require that such an order be issued, and the order is in the interests of the offender's further development.

101. An order placing an offender in a youth protection and custody institution may also be issued if the offender cannot be held fully responsible for the offence committed because his/her mental faculties are inadequately developed or pathologically disturbed. In such cases, the behavioural expert whose advice is sought must be a psychiatrist.

102. Young offenders are placed in a youth protection and custody institution for up to two years, with a possibility of a further two-year extension. Minors with diminished responsibility may have their placement extended to a maximum of six years. The Juvenile and Vice Police Squad has holding cells where young people may be held for up to two days for questioning, though they must then be moved to the youth protection and custody institution (Justitiële Jeugd Inrichting Curaçao; JJIC) After questioning, the public prosecutor will decide whether the person in question is to be held for one or two days. The public prosecutor may extend the period of pre-trial detention, but only in the event of a very serious crime.

103. If convicted, a young person below the age of 16 may be placed in the JJIC. Youngsters aged 16 and over are placed in the young adults wing of the facility, but only as a last resort. Alternatively, they may be detained at a police station that has overnight accommodation. Anyone below the age of 16 who is sent to prison is placed on the Forensic Observation and Counselling Wing (FOBA).

104. Before the decision is taken to place a minor below the age of 16 in the JJIC, alternative sanctions such as extra chores, extra mentor counselling sessions, extra training, garden duties and exclusion from activities outside the organisation will first be considered. These youngsters are guided and supported in such a way that they become aware that their behaviour must change, and they accept that they need extra help. However, they may not be given help (whether they want the help or not) without the permission of their parents. Young

people can also be given a time-out, particularly if they are under the influence of drugs, or are aggressive and cause harm to themselves and others.

**Answer to paragraph 17 (a)**

105. The government wishes to emphasise that detention is used only as a last resort. The possibility of adopting a less stringent alternative measure is always considered. Only if such a measure is viewed as ineffective (because of the risk of absconding and/or because it would present an obstacle to the return of the person concerned) is detention imposed, and then only if the grounds for detention are applicable.

**Answer to paragraph 17 (b)**

106. EU member states are obliged to refuse entry to persons who do not fulfil the requirements set out in article 6 of Regulation (EU) 2016/399 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code) with the aim of preventing illegal entry. Detention is the only way to effectively prevent such entry to the territory. This is not negated by the mere fact that a person has applied for asylum. Existing EU provisions allow for detention in such cases (see article 8, paragraph 3 (c) of Directive 2013/33, which sets out the grounds for detention and standards for the reception of applicants for international protection). Detention is only permissible if an application is declared inadmissible or manifestly ill-founded. This is regulated in section 6, subsection 3 and section 3, subsection 3 of the Dutch Aliens Act 2000.

107. The government wishes to point out that the EU has a common asylum procedure that all member states are obliged to comply with. Detention of persons who are awaiting the outcome of their asylum procedure is rare.

108. The checks to see if a person fulfils the requirements for entry constitute an individual determination.

109. In the government's view, detention of migrants belonging to vulnerable groups is not by definition impossible: the detention order must fully consider and substantiate how the vulnerability of the migrant (including his/her state of health) has been taken into account. If detention of a vulnerable migrant would be unreasonably burdensome, it will not be imposed. When vulnerable migrants are detained, appropriate care and guidance is provided in the detention centre.

**Answer to paragraph 17 (c)**

110. Detention is a measure that is imposed for the shortest possible time. It is imposed only on strictly defined grounds and after other, less drastic, measures have been considered. The maximum time limit laid down in the Return Directive is enshrined in national law. There are no instances where detention had to be ended because the maximum time limit had elapsed. In all cases, either removal had taken place, or the migrant's interest in not being detained outweighed the state's interest with regard to detention. Of course, an accumulation of periods of detention on different legal grounds may exceed a time frame of 18 months. Repeated detention is not desirable, as this should not be necessary to achieve the objective of detention: the removal of the migrant. However, if a migrant cannot be removed and must be released, and then continues to remain illegally in Dutch territory, repeated detention may be in order. In that case, it is up to the state to show that either new circumstances or a significant period of time justify a renewed attempt at forced removal. Renewed detention after a 'pro forma release' is not legal. Alternatively, detention following criminal proceedings may be sought if the individual in question is also subject to an exclusion order (i.e. is declared an undesirable alien). In situations where return or removal is not yet possible due to a lack of cooperation on the migrant's part, detention has to remain an option.

**Answer to paragraph 17 (d)**

111. In the Dutch system, all detainees receive legal assistance from a lawyer who has knowledge of the legal ramifications of detention. They have the option to immediately file for release (typically immediately after detention). The law requires that the individual appear before the court within 14 days at the latest; in practice oral hearings tend to take place after

10 days. In the rare event that a lawyer does not file for the release of the migrant, detention will automatically be reviewed after 28 days. The court assesses the lawfulness, necessity and proportionality of detention.

112. If a detainee does not appeal the detention order via their lawyer a first ex officio notification to the court will be made. In practice this occurs in only a limited number of cases, as every detainee is assigned a specialised lawyer free of charge. This notification is sent to the court after 28 days. The court then assesses the lawfulness, necessity and proportionality of detention.

113. If the detainee does not appeal during the subsequent three-month period their appointed lawyer will be notified that the individual is still in detention. The lawyer is asked whether they are still the detainee's legal representative, and it will be made clear that it is possible to lodge an appeal on behalf of their client.

114. In the limited number of cases in which the detention of a third country national is prolonged after six months (by a maximum of 12 months) and the decision to do so is not appealed by the detainee's lawyer, the court will automatically be notified of the prolongation decision within 28 days of the date of the decision.

115. The existing procedural safeguards are contained in sections 94 and 96 of the Aliens Act 2000, on the basis of which migrants may lodge an application for judicial review of the measure or its extension at any time.

116. The costs of legal assistance are always borne by the government. This also applies to repeated applications for review.

117. The average duration of administrative detention of third-country nationals was 72 days in 2013, 67 days in 2014, 55 days in 2015 and 45 in 2016. No third-country nationals are detained for longer than 18 months in administrative detention.

**Answer to paragraph 17 (e)**

118. In the opinion of the government, the use of isolation should always be restricted to an absolute minimum. In recent years, the administrative detention locations have consistently aimed to reduce its use.

119. Isolation as a disciplinary measure is a last resort. However, as a punitive measure it cannot be totally excluded in all situations. This is because the safety of migrants or members of staff at the location has to be protected.

120. As far as possible, isolation as a disciplinary measure takes place in the detainee's cell and alternative sanctions are imposed wherever possible. The use of isolation is governed by a number of procedural safeguards to ensure its proper application, such as an interview with the director of the centre before or shortly after the measure is imposed. In addition, legal remedies are available. There is a complaints committee within every detention centre and detainees can appeal to the Council for the Administration of Criminal Justice and Protection of Juveniles.

121. Detainees are placed in protective isolation only if this is absolutely necessary for their safety (for example, if there is a suicide risk) and/or that of personnel and others in the centre (for example, an infectious disease). The maximum duration of protective isolation is in principle two weeks, but the measure will be ended sooner if it is no longer necessary. In many cases, the measure is imposed in the extra-care unit, and if that is not possible, in isolation rooms equipped with facilities to reduce the risk of sensory deprivation, as far as this is feasible in the specific case. There is also daily contact with detention centre staff. A psychologist or physician assesses the situation every day to see if the measure is still necessary and if it is possible to offer extra facilities to alleviate the isolation (participation in activities for instance).

122. The bill introducing a separate framework for the detention of undocumented migrants under administrative law is still awaiting the approval of Parliament.

**Answer to paragraph 18**

123. The necessary steps to amend policy have now been taken. An independent body has been set up to advise on the whether prisoners serving life sentences are ready to begin activities aimed at preparing them for a possible return to society. In addition, this body will advise on the progress of activities aimed at the resocialisation and reintegration of life prisoners in the context of applications for early release. The Advisory Committee on Prisoners Serving Life Sentences began its work on 1 June 2017.

124. The relevant legislation was amended on 1 September 2017 to enable life prisoners to be assessed in terms of a range of risks including that of reoffending, and of personality development. It is now possible to offer them reintegration leave.

125. Through these changes the Netherlands has implemented national and international law with regard to the imposition and enforcement of life sentences and created a real possibility for review of life sentences, which for eligible prisoners may lead (subject to conditions) to a remission of sentence or early release.

**Answer to paragraph 19**

*Appropriate sentences*

126. The government believes that young people who come into contact with the police or judicial authorities should receive assistance, should be treated correctly and should be given sentences that are appropriate in light of their offence, character and situation. Dutch juvenile criminal law is of an educational nature, focusing on development, re-education and rehabilitation. The basic principle is that custody should be used only as a last resort, and for the shortest appropriate period of time. In the prosecution of criminal offences, the aim is to keep children out of court and to find alternatives.

127. Dutch juvenile criminal procedure provides that a judge who orders pre-trial detention must officially determine whether this can be suspended immediately or at a later date. Furthermore, throughout the period of pre-trial detention, the courts must frequently ascertain that detention continues to be lawful. Alternatives include the suspension of pre-trial detention under specific conditions (for example, a duty to report and/or a restraining order), night detention or house arrest with electronic monitoring.

*Family accommodation centres*

128. The government would first emphasise that family accommodation centres are not closed facilities and that the premise of the question is therefore incorrect. These centres offer shelter to minors and their families who have no right to remain in the Netherlands or to reception, but who would otherwise be facing an emergency situation. The centres are not, in principle, intended to provide shelter for persons with a residence permit, EU citizens or Dutch nationals, since these groups can usually apply for assistance under different regulations and provisions (i.e. not under immigration law) or, in the case of certain minors (see below), may rely on the other parent, who can assume parental responsibility for the child.

129. Children with Dutch nationality may sometimes be housed in a family accommodation centre if one or more family members are illegally resident in the Netherlands. This situation may arise if, for example, a person possessing Dutch nationality acknowledges parentage of a minor child without residence rights, but then fails to take responsibility for the child. Cases involving such a child with Dutch nationality and another parent who is a third-country national are examined in light of the Chavez judgment handed down by the Court of Justice of the European Union on 10 May 2017 (C-133/15), to ascertain whether the care of the child with Dutch nationality is a reason to grant residence rights to the parent in question.

130. It is the parents' decision whether children with Dutch nationality make use of shelter in a family accommodation centre. Family members with Dutch nationality who reside in such a centre are not deprived of their liberty in any way, though other persons residing there may be subject to such a measure.

**Answer to paragraph 20**

*Agitated patients*

131. In general, nursing staff are perfectly able to cope with tensions on the ward. The government nevertheless considers it unfeasible in practice to completely rule out police assistance. There are not always enough staff available to deal with violent or extremely violent situations, and therefore the occasional deployment of police officers remains necessary.

*Voluntary patients*

132. Patients admitted voluntarily fall under the Medical Treatment Contracts Act (WGBO). The basic premise of this legislation is that the aims and methods of treatment must be established with the patient on the basis of informed consent and then written up in the patient's medical record.

133. Voluntary patients may sometimes be admitted to a closed ward because on admission it was concluded that they would benefit from a structured environment and more intensive supervision than is possible on an open ward. Patients are informed about the closed setting and the degree of freedom allowed is discussed with the patient and described in the treatment plan. If patients decide they do not want to be on a closed ward and staff believe that more supervision is necessary than is available on an open ward because they are a danger either to themselves or to others, the court decides after consulting an independent psychiatrist whether involuntary care is necessary.

134. Legislation is being drafted which will give patients the right to receive advice and assistance from a patient rights adviser at a very early stage, when the first steps are being taken to obtain a compulsory care order. The patient rights adviser informs the patient of his/her rights at that point in time. Under the new legislation, measures restricting the liberty of the patient may not be imposed without a prior assessment by the court. In the situation under the Psychiatric Hospitals (Committals) Act (BOPZ), the courts only review the initial compulsory care order. Restrictions on liberty subsequently imposed in the hospital are not reviewed by the courts in advance but can be retroactively assessed following a complaint from a patient.

*Minimising seclusion*

135. Care providers must always report the use of compulsion, including seclusion, to the Health Care Inspectorate (IGZ). Institutions self-assess in accordance with the new IGZ assessment framework, and the IGZ subsequently carries out unannounced inspections.

136. Agreements have been reached with the sector on minimising the use of seclusion, and converting seclusion rooms to high/intensive care units or high-security rooms. At present, sixteen large mental health institutions have signed a manifesto undertaking to close all seclusion rooms by 2020. The Compulsory Mental Health Care Bill makes it possible to provide compulsory care on an outpatient basis as well.

**Answer to paragraph 21**

137. At Zuyder Bos custodial institution, a delegation from the Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) observed that a large number of disciplinary procedures had taken place in the recent past, leading to the placement in disciplinary confinement of 58 prisoners in the first four months of 2016. This is an average of under four per week. This is an acceptable figure, which does not significantly differ from that in other institutions. Furthermore, sanctions policy in Zuyder Bos is the same as in other institutions. In the cases referred to, prisoners were either confined to their own cells or placed in an isolation cell.

**Answer to paragraph 21 (a)**

138. The Government has taken measures to improve the detention conditions at Alkmaar Police Station. The station is currently being transformed to a modern police station. This

means that the shortcomings, including poor daylight and outdated cells, are being dealt with. After reopening the facility will meet all the set requirements.

**Answer to paragraph 21 (a) for Aruba**

*Measures to improve detention conditions at the Correctional Institution (KIA) in Aruba*

139. The material state of the building needs improvement. Efforts have been made to improve prisoners' quality of life, such as preventing overcrowding (no more than two prisoners to a cell). The KIA also complies as much as possible with the wishes of prisoners as communicated to the Supervisory Committee.

140. Prisoners' dietary requirements are catered for. Six different nutritional programmes have been developed:

1. normal diet;
2. diets suitable for persons suffering from diabetes, hypertension, dyslipidemia, gastritis and other intestinal problems;
3. a high-fibre diet for people with gastrointestinal problems;
4. vegetarian;
5. diet suitable for persons suffering from hyperuricemia;
6. soup diet for persons requiring a liquid diet.

141. Since 2014 the KIA has had two doctors in permanent employment. A number of protocols have been drawn up and implemented for the medical care of detainees. Medical services including blood test collection, PAP smears and ECGs can now be provided within the KIA. Since 2015 the services of a psychiatrist who can see detainees once a week have been available. Care is also provided by two social workers and two psychologists who are on permanent employment contracts. A dentist visits the KIA once a week.

**Answer to paragraph 21 (b) for Aruba**

*Measures to combat ill-treatment and inter-prisoner violence in KIA*

142. Prisoners at the KIA are entitled to complain to the prison's Supervisory Committee about any restriction or violation of their rights. Committee members have access to the institution and can talk to prisoners on a regular basis. The KIA management holds monthly meetings with the Supervisory Committee.

143. Under article 6, paragraph 2 of the Decree on the Prison and Remand Centre Supervisory Committee, complaints can be lodged with the KIA social worker or directly with the prison's Supervisory Committee. The public prosecutor will report any ill-treatment or violent incidents involving personnel at the facility to the Public Service Investigation Agency. The Agency is free to conduct its own investigation and can count on the KIA's full cooperation.

144. The main cause of violence and intimidation between prisoners is the presence of gangs. High-risk behaviour is identified at an early stage and, as a precaution, certain prisoners are housed in cells spread out across the prison.

145. The internal assistance team is deployed if there is unrest at the KIA or if prisoners fail to comply with orders from prison officers. This trained and certified team responds to incidents in accordance with the principles of proportionality and minimum coercion, and draws up a report if it has used force.

*Day programme*

146. In 2016 the KIA launched a programme of courses and meaningful activities for prisoners. In 2017 a wide range of activities focusing on resocialisation and reintegration in society were on offer. For example, prisoners can obtain a level 4 MBO (secondary vocational education) certificate by training as a sport and recreation coach. Or they can

attend English lessons and take a state examination in the subject. Various curricula based on the regular education system are being developed to enable prisoners to complete their secondary education. Prisoners can apply for job assignments through the KIA Employment Office.

147. Courses are held on anger management and social skills, and are followed up by discussion sessions. Prisoners can also follow auto body repair and airbrushing courses as well as a certified welding course.

148. Activities such as yoga/Pilates, strength and fitness training, weekly library visits, films, crafts, drawing and music lessons are on offer. A range of spiritual activities based on different beliefs and convictions are organised.

**Answer to paragraph 21 (a) for Curacao**

Measures to improve detention conditions at the SDKK

149. The government of Curaçao is focusing on renovating, maintaining and upgrading the current facilities at the Curaçao Centre for Correction and Detention (Sentro di Detenshon i Korekshon Kòrsou; SDKK). The renovation of the following priority cell blocks have already been completed: cell block 1, cell block 6, cell block 7, cell block 8, the section for illegal immigrants, the punishment block and the isolation block in connection with safety measures. As of the end of February 2015 the following renovations were completed in block 1: an emergency exit was created, fire hoses were put in place; new electrical outlets were installed in the cells, new sanitary facilities were built and a new storage area was constructed.

150. The renovation of the young adult cell block will start shortly. Additionally, the renovation of toilet facilities, the kitchen area and roof and installation of new locks on the cells are currently under way.

151. The renovation of the toilet facilities is part of a 'water project', which includes the renovation of all toilets, drinking-water taps, water pipes and the sewage system in cell blocks 1 to 8. Renovation of blocks 7 and 8 has already been completed and block 6 is in its final phase. The remaining blocks (1-5) are currently in phase 2 of the water project, but progress is highly dependent on financial resources.

**Answer to paragraph 21 (b) for Curacao**

Inter-prisoner violence

152. Most violence is initiated by rival gang members. Inter-prisoner violence is avoided by housing rival gang members in separate blocks. During intake there is a special focus on any problems or hostility one prisoner might feel with regard to another and this information is used to determine their placement. High-risk prisoner movements are announced through the communication system as a 'red light' warning and all other prisoner movements come to a halt until the high-risk prisoner has been moved.

153. An example of inter-prisoner violence occurred in 2016. In this incident, one prisoner suffered permanent injury and was eventually granted a suspension of his sentence since the SDKK was unable to provide the care he needed. Measures were taken after the incident to separate the prisoners and transfer them to other blocks.

154. A module has been added to the prison administration system enabling the registration of all incidents. Analysis of these records will make it possible to better monitor the situation, identify potential risks and ultimately prevent inter-prisoner violence.

**Answer to paragraph 21 (c)**

155. The government wishes to emphasise that Dutch policy is guided firmly by the principle of equivalence of care. The quality of medical care provided to prisoners must be equivalent to that available to members of the public. The government is convinced that this is the case in the Netherlands. In all custodial institutions a GP is available 24/7 for emergencies. In addition, prisoners with non-acute health problems can usually see a GP

within 24 hours during the week. Alongside the GP, every prison has a medical service staffed by specialised prison nurses.

156. Since the CPT's visit, the situation at Krimpen aan den IJssel custodial institution has changed with regard to the employment of psychiatrists. At that time, the psychiatrist staffing level at the institution was 0.4 FTE. Now it is 1.6 FTE. This increase in the availability of psychiatric assistance at Krimpen aan de IJssel is a clear response to the CPT's recommendation.

**Answer to paragraph 21 (d)**

157. The government sees time spent in prison as an opportunity to address drug-related problems. Measures to discourage drug abuse are therefore an integral part of any stay in a custodial institution. One aspect of this is detection and penalties: regular drug testing is carried out and disciplinary procedures initiated where tests are positive. Support is available for users who are sufficiently motivated to stop using drugs. At both national and regional level, prisons work with organisations offering addiction treatment with the aim of increasing awareness and knowledge of substances and addiction in custodial institutions. Prisoners can also be transferred to specialised clinics for treatment. Between 2015 and 2017 custodial institutions were offered on-site information provision for prison staff concerning drug issues and the signs and risks of substance abuse.

## Elimination of slavery, servitude and trafficking in persons (art. 8)

**Answer to paragraph 22 (a)**

158. In 2015 and 2016 inspectors working for the inspectorate (ISZW) of the Ministry of Social Affairs and Employment followed training courses to help them recognise the signs of human trafficking for the purpose of labour exploitation. Their training included study materials produced by the project entitled 'Development of Common Guidelines and Procedures on Identification of Victims of Human Trafficking (2011-2013)'. Investigating officers at ISZW followed a course entitled 'Approach to tackling human trafficking for other forms of exploitation' at the Dutch Police College in order to obtain certification.

159. ISZW has good contacts with the Human Trafficking Coordination Centre (CoMensha), which arranges shelter for victims of labour exploitation.

160. The Training and Study Centre for the Judiciary (SSR) offers specialised courses for judges and prosecutors on human trafficking (for the purposes of sexual and labour exploitation). In addition, the general education of criminal law judges and prosecutors addresses the issue of victims, including the important matter of compensation.

161. The FairWork project (financed by the Ministry of Social Affairs and Employment and supported by ISZW) has provided training to staff at 40% of the 390 municipalities on how to recognise, respond to and report human trafficking.

162. In the Netherlands, information aimed at preventing human trafficking for the purposes of sexual and labour exploitation is disseminated in two ways. First, members of the public can access information online, for example in the form of digital leaflets about sex work and labour exploitation, produced in a range of languages and aimed at current or potential victims. Second, the Netherlands collaborates with the primary countries of origin in Central and Eastern Europe. Dutch embassies provide information about living and working in the Netherlands that is geared towards potential labour migrants. The government also holds frequent consultations on this issue with counterparts in several countries of origin.

**Answer to paragraph 22 (b)**

163. The National Rapporteur on Trafficking in Human Beings and Sexual Violence against Children reports to the government on the nature and extent of human trafficking in the Netherlands. The office of the Rapporteur reports annually on the number of victims and on the investigation and prosecution of perpetrators. It also publishes research on specific topics.

164. The decision on whether to investigate is not dependent on the number of victims: ISZW investigates single victim cases as well as cases with multiple victims.

165. ISZW pays specific attention to the exploitation of children and child labour, and to other groups that are especially vulnerable to exploitation, such as disabled people and illegal workers. In recent years ISZW has rarely encountered cases of child exploitation.

166. Considerable effort is being put into training various professionals (municipalities, caregivers, police) to recognise the signs of human trafficking and informing them about how and where to report their observations. The results of these efforts are the subject of a study carried out by the National Rapporteur. A committee chaired by Naïma Azough has drawn up a practical roadmap and a comprehensive risk assessment instrument that will help youth care professionals identify child victims. In the next few years all frontline police employees will receive training in recognising signs of human trafficking. This training is currently being developed and special attention will be paid to detecting child victims. The partners in the immigration system continually focus on detecting signs of human trafficking among migrants. Professionals working in the system (including IND personnel) are trained to detect signs of human trafficking. A variety of instruments have been developed to facilitate early detection. One example is the 'quick reference card', which lists indicators and outlines the procedure for reporting signals. Staff training instruments include workshops and presentations.

**Answer to paragraph 22 (c)**

167. A private member's bill introduced by Roelof van Laar aims to impose a statutory duty on businesses to exercise due care to ensure that their goods and services do not rely on child labour. The ultimate objective is to make sure that consumers can purchase goods and services that are not produced using child labour. Before the bill can pass into law, it must be approved by the Senate.

## Freedom of movement (arts. 12 and 26)

**Answer to paragraph 23**

168. Under the Urban Areas (Special Measures) Act particular requirements may be imposed on people who wish to live in a complex, street or area designated by the Minister at the request of the municipal council where the quality of life is seriously threatened. Such a request from a municipal council is assessed to determine whether it is necessary, appropriate and proportionate and is in accordance with the principle of subsidiarity. In addition, there must be sufficient suitable housing in the housing market region for people who are unable to take up residence in the complex, street or area in question.

169. Under section 8 of the Act requirements regarding the nature of a person's income may be set. Under section 9, priority can be given to prospective tenants with certain 'socioeconomic characteristics'. And under section 10, a housing permit may be refused to a person who in the recent past has caused serious nuisance or exhibited criminal behaviour. Only the types of behaviour listed in the Act can be taken into account. Personal data is processed in such a way as to protect the privacy of people seeking accommodation. Legal protection is also regulated.

170. The Act contains a hardship clause to the effect that a housing permit will not be refused if this would result in an exceptional case of extreme unfairness.

171. Regulation of people's freedom to choose their residence is necessary to improve the liveability of certain areas and to fulfil the State's positive obligation to guarantee public safety. The protection of public order and the common interest in a democratic society justify the restrictions.

172. A number of municipalities have designated complexes, streets and areas where measures under sections 8 and 9 of the Act may be applied. In addition, several requests for permission to apply the measures in section 10 have been approved.

173. The Grand Chamber of the European Court of Human Rights has ruled that the measure referred to in section 8 of the Urban Areas (Special Measures) Act is a justified restriction on freedom to choose one's residence as enshrined in article 2 of Protocol No. 4 to the European Convention for the Protection of Human Rights and Fundamental Freedoms (application no. 43494/09).

**Freedom of movement within the Kingdom**

174. In 2016 a private member's bill containing a settlement arrangement for Dutch nationals from Aruba, Curaçao and St Maarten was voted down in the House of Representatives.[7]

175. No new legislation is in preparation.

## Treatment of aliens, including refugees and asylum seekers (arts. 7 and 13)

**Answer to paragraph 24 (a)**

176. The statutory decision period for family reunification applications in the Netherlands is 90 days, which can be extended by another 90 days. The total maximum decision period is therefore six months. This period commences as soon as the application is submitted. If information is missing and the IND asks the applicant to provide more information, the decision period will be suspended.

177. In practice, a decision is usually taken between 6 and 12 weeks after receipt of the fees or submission of the application. Under normal circumstances, the 90-day decision period is rarely extended by another 90 days.

178. However, as a result of the increased influx, the duration of the procedure for asylum family reunification grew in 2015 and 2016. Currently, a six-month period for decision-making on asylum family reunification is considered standard. The IND now has a major backlog in the processing of applications for asylum family reunification. In many cases, applications are not completed within the statutory decision period of six months. This is especially the case when the applicant is unable to meet the standard of evidence.

179. In order to reduce processing time, the IND has changed its internal working processes and dedicated additional capacity to processing applications for asylum family reunification. In addition, the Ministry of Foreign Affairs has created additional capacity at several embassies for processing such applications. In 2016, the government also proposed extending the statutory decision period for asylum family reunification applications.

**Answer to paragraph 24 (b)**

180. In the opinion of the government, it is indeed important that harassment, threats, discrimination and violence against LGBTI asylum-seekers or refugees in reception facilities are effectively investigated and prosecuted. On 31 March 2016 it sent a detailed letter to the House of Representatives setting out stricter measures to tackle anti-social and criminal asylum seekers: it proposed tightening up the rules in reception facilities to allow for a sharper focus on the prohibition of unacceptable behaviour, such as discrimination, and on the sanctions already in place. These measures are over and above possible sanctions under the criminal law. Victims will be encouraged to report such behaviour.

**Answer to paragraph 24 (c)**

*Asylum procedures in the Caribbean Netherlands*

181. One of the core aims of migration policy in the Caribbean Netherlands is to establish an asylum procedure that is in accordance with international obligations.

[7] https://www.tweedekamer.nl/kamerstukken/wetsvoorstellen/detail?id=2012Z13579&dossier=33325

182. The 1951 Refugee Convention and the European Convention on Human Rights (ECHR) apply in full in the Caribbean Netherlands. Under section 12a of the Admissions and Removals (Bonaire, St Eustatius and Saba) Act, migrants can submit a request for protection to the Caribbean Netherlands Immigration and Naturalisation Service (IND CN). Persons in need of protection will be granted a temporary residence permit valid for one year. This can be extended every year. To comply with article 3 of the ECHR, and the Convention and Protocol relating to the Status of Refugees, the criteria and procedure for obtaining protection are laid down in chapter 16 of the Admissions and Removals (Bonaire, St Eustatius and Saba) Implementation Guidelines.[8]

**Aruba**

183. Aruba is a signatory to the Convention of 1951 through the 1967 Protocol relating to the Status of Refugees. An asylum procedure is in place.

184. Article 19 of the Admissions Decree 2009 provides that asylum seekers may stay in Aruba and may also take up employment while their asylum application under the Refugee Convention is being processed. This article is also applies to the fulfilment of obligations arising from international conventions such as those relating to the combating of human trafficking.

**Curaçao**

185. Curaçao is not a party to the 1951 Refugee Convention or the 1967 Protocol, nor does it have any procedures in place for asylum seekers and refugees. It is therefore not in a position to take any of the measures referred to. With regard to the principle of non-refoulement, the government of Curaçao has a policy in place in order to protect migrants from being returned to a country in which they claim to be at risk of persecution based on race, religion, nationality, membership of a particular social group or political opinion. This policy is implemented in the context of the ECHR (specifically article 3). Furthermore, asylum seekers who apply for refugee status are allowed to stay in Curaçao pending a decision from UNHCR.

*'Accelerated track'*

186. The Netherlands has no 'accelerated track' for the groups referred to. Only applicants from countries designated as 'safe countries of origin' within the meaning of Directive 2103/32 (the Asylum Procedures Directive), Dublin claimants and people who submit a repeat application are subject to an accelerated procedure. That said, the Netherlands has passed legislation enabling the fast-track processing of applications which are likely to be granted, but these provisions have not yet been implemented in practice.

187. The general asylum procedure provides for a term of eight days, which applies in principle to all other cases too. If it emerges that it would not be responsible to give a decision within this period, the applicant can be referred to the extended asylum procedure.

188. The Dutch asylum procedure also provides for a rest and preparation period of at least six days before the general asylum procedure begins. In this period applicants are able to recover from their journey and prepare for the procedure. No questions are asked about their reasons for seeking asylum.

189. In this period the IND checks to see whether applicants need special procedural safeguards, depending on their individual situation. If such a situation is present, this may mean that the application cannot be processed within the eight days provided for by the general asylum procedure. This may be the case, for example, if the applicant is incapable of making a coherent statement during the interview, or if other reasons make it impossible to interview him/her in the short term.

[8] Parliamentary Papers, House of Representatives II, 2009-2010, 32 282, no. 3, p. 4.

*Safe third countries*

190. A 'safe third country' is a country other than the country of origin where the applicant can reasonably apply for protection on the basis of a connection they have with that country. In accordance with the Asylum Procedures Directive, a safe country is one where:

- Life and liberty are not threatened on account of religion, nationality, membership of a particular social group or political opinion;
- There is no risk of serious harm;
- The principle of non-refoulement is respected;
- The possibility exists to request refugee status and to receive protection.

191. One of the conditions for the application of the safe third country concept is that there must be a connection between the applicant and the country in question on the basis of which it would be reasonable for that person to go to that country. In addition, the country in question must permit the applicant to enter its territory.

192. Furthermore, the applicant must be able to challenge the application of the safe third country concept on the grounds that the third country is not safe in his/her particular circumstances. Applicants must also be allowed to challenge the existence of a connection with the third country.

193. The concept of a safe third country is applied on a case-by-case basis. The Netherlands does not maintain a list of safe third countries.

194. The return and removal of asylum seekers to these countries is governed by the same rules, procedures and safeguards as apply to other individuals whose asylum application is denied.

*Assistance and support*

195. In 2016 policy on support for voluntary departure was re-examined and a proposal made for changes to bring the amounts made available for support in line with the non-binding EU standard amounts set under the Dutch EU Presidency.

196. Consequently, the standard financial support for reintegration (€1,750) for migrants with an asylum background lapsed on 1 July 2017. Asylum seekers therefore no longer receive €1,750 in cash plus €1,500 in kind. Instead, migrants with or without an asylum background are eligible for a standard reintegration package worth €1,800, of which a maximum of €300 can be paid in cash and the rest (as before) in kind. This reintegration support arrangement is carried out by the IOM and various NGOs. This is over and above any basic departure support that may consist of information on voluntary departure, a plane ticket, assistance with obtaining travel documents and a limited contribution of €200 to cover initial living costs after return and the journey from the airport to the migrant's home. In principle, the IOM is responsible for this basic departure programme (the Return and Emigration Assistance from the Netherlands (REAN) programme).

197. In addition, there is scope for supplementary support in priority cases, as an extra incentive for specific migrants (or groups of migrants) to return voluntarily. This entails tailor-made solutions in the form of comprehensive case management and reintegration support.

## Access to justice and fair trial (arts.2, 14 and 24)

### Answer to paragraph 24 (b)

*Legal aid in the Netherlands*

198. Access to justice is a constitutional right. Besides access to the courts, the Dutch constitution also gives residents of the Netherlands the right to be represented by a lawyer. Anyone in need of professional legal aid but unable to bear the costs, either partially or fully,

is entitled to state-funded legal aid, as provided for in the Legal Aid Act. Court fees may be reduced for litigants who have limited financial resources.

199. The Dutch budget for legal aid is open-ended. In order to ensure this budget is used effectively the government is preparing new policy and changes to the Legal Aid Act. The main aim is to settle legal disputes using the more cost-effective Legal Aid and Advice Centres instead of through litigation by lawyers. Another measure is to set a higher financial threshold for entitlement to state-funded legal aid. The changes in legal aid policy will be designed to preserve the guarantee of access to justice. If access to justice in a particular case is endangered, the Legal Aid Council can lower the financial threshold.

*Legal aid in the Caribbean Netherlands*

200. There have been no cuts to the legal aid budget in the Caribbean Netherlands. Anyone whose financial resources are limited can be assigned counsel under the Legal Aid (Bonaire, St Eustatius and Saba) Act. In principle, a person's financial situation is irrelevant in criminal proceedings: every defendant is entitled to be assigned a lawyer who will provide legal representation at no cost.

*ZSM procedure*

201. The Public Prosecution Service's power to impose a penalty for certain minor criminal offences – laid down in law – without recourse to the courts (strafbeschikking) is separate from the 'ZSM procedure'. The strafbeschikking has existed since 2008 and is regulated in the Code of Criminal Procedure. The government would emphasise that the person on whom the penalty is imposed can challenge the penalty in court.

202. The ZSM procedure is simply a work process in which the Public Prosecution Service consults with partners in the criminal justice system to determine how best to dispose of a particular case, taking into account the specific circumstances, such as the suspect's character and the interests of the victim. The fact that a case falls under the ZSM procedure does not necessarily mean that it will always be settled by the Public Prosecution Service and not the courts. This is clear from the figures: in around 40% of the cases examined under the ZSM procedure a notice of summons and accusation is issued and the case goes before the criminal court.

203. The strafbeschikking is therefore one of a range of disposal options but certainly not the only one. Others include the decision not to prosecute (subject to conditions) (sepot), settlement penalties and mediation.

204. Furthermore, the ZSM procedure does not affect the rights of suspects. Any person who is arrested is entitled to free legal representation by a lawyer before and during police questioning. If, in the interests of the investigation, remand in police custody has to be extended, suspects are assigned counsel free of charge.

205. In addition, where a strafbeschikking takes the form of an alternative sanction, disqualification from driving, a behaviour order or a fine of over €2,000, it can only be imposed if the suspect has been heard by the public prosecutor. In that context, suspects are entitled to assignment of counsel (article 257c, paragraphs 1 and 2 of the Code of Criminal Procedure). Finally, it is the Public Prosecution Service's settled policy that a strafbeschikking in the form of a fine can only be paid on the spot if the suspect is assisted by counsel. In all other cases, suspects are issued with the strafbeschikking or it is sent to their home address, after which they have two weeks in which to consider the matter. They can decide to bring the case to court, for which they are entitled to legal aid. Suspects are therefore never confronted with an irrevocable decision without being eligible for legal aid or the option of bringing the case before the court.

**Answer to paragraph 26**

*DNA*

206. The DNA Testing (Convicted Persons) Act empowers the public prosecutor to order a person who has been convicted of a criminal offence for which pre-trial detention is

permitted to provide a cell sample for DNA testing. The relevant offences are listed in article 67, paragraph 1 of the Code of Criminal Procedure. One exception is the group of convicted persons on whom no penalty (or non-punitive measure) has been imposed (article 9a of the Criminal Code) or in whose case only a financial sanction or measure has been imposed.

207. The public prosecutor can refrain from imposing an order for DNA testing if it has been reasonably established that in view of the nature of the crime or the circumstances in which it was committed, creating and processing a DNA profile will not be helpful in preventing, detecting or prosecuting criminal offences in the convicted person's case.

208. If an order for DNA testing is made, cell material is used to create a profile which is then stored in the DNA database for criminal cases. No one may object to the taking of a cell sample but they can object to its storage in the database. Objections are heard by the court.

209. On 18 July 2017 the Committee adopted its views concerning the communications No. 2362/2014 and No. 2326/2013. In the light of these views, the government has decided to review the DNA Testing Act. The Minister of Justice and Security will inform the Dutch parliament of his intention to make two changes with regard to compulsory tissue sample collection and DNA testing of convicted minors. These amendments will ensure the proportionate application of the DNA Testing Act with regard to convicted minors. The government will provide the Committee with more detailed information on the measures in its response to the abovementioned views.

*Young people tried as adults*

210. Minors under 18 who commit offences are tried under juvenile criminal (procedural) law. Although the general rule for those aged 16 and 17 is that juvenile criminal law is applied, the court may decide under article 77(b) of the Criminal Code to try them under general adult criminal law. In arriving at this decision the court takes into consideration the offender's character, the seriousness of the offence or the circumstances under which it was committed. Furthermore, under article 77(c) of the Criminal Code, the court can impose a sentence under juvenile criminal law on young adults between 18 and 22 years of age, taking into account the character of the offender or the circumstances in which the offence was committed. Before the entry into force of the 'Adolescent Criminal Code' on 1 April 2014, this was possible only for young adults aged between 18 and 20.

211. If a 16 or 17 year-old is tried as an adult under general criminal law, he/she will be placed in an institution for adult offenders after conviction. The court takes this into account when deciding whether to apply adult criminal law. This option is used in about 1% of cases. It should be noted that almost all minors on whom a general criminal law penalty is imposed have turned 18 by the time enforcement of the penalty begins.

## Right to privacy (art. 17)

### Answer to paragraph 27

212. The Bill to amend the Market Regulation (Healthcare) Act and certain other Acts in connection with improvements to supervision, investigation and enforcement (VTOWMG)[9] provides a statutory basis for and extends the obligations resting on healthcare insurers to adhere to strict regulations governing formal and substantive auditing of claims submitted by care providers or insured persons. The current multi-stage auditing procedure laid down in ministerial orders will now be incorporated into an Act of Parliament since it has been in use for almost ten years and is stable. The auditing procedure, which is compulsory for healthcare insurers and care providers, strikes a good balance between the interests of insured patients, care providers and insurers. Only the insurers' medical advisers have direct access to the relevant parts of the patient's medical records, and they must first complete all previous audit stages. The checks are necessary because the insurer must be able to ascertain that meeting the claim would be lawful. The insurer must establish that the correct rate has been applied for the treatment/care claimed for and that other relevant requirements have been complied

[9] Parliamentary Papers, House of Representatives 2013/14, 33 980.

with. Lastly, the insurer must establish that treatment/care provided can be deemed to be appropriate, in the sense that it is necessary for the insured patient in question.

## Freedom of Religion (art. 18)

### Answer to paragraph 28

213. The bill banning the wearing of face-covering clothing in education and healthcare institutions, government buildings and on public transport was passed by the House of Representatives in November 2016 and is now before the Senate.

214. The ban will apply to everyone who wears clothing covering their faces at the locations referred to in the bill. Because it also affects Muslims who cover their faces, the ban may lead to a restriction on freedom of religion (article 6 of the Dutch Constitution, article 9 of the ECHR and article 18 of the ICCPR). Such a restriction is justified under article 18, paragraph 3 of the ICCPR provided it is prescribed by law and is necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others. The European Court of Human Rights assessed the French ban on face-covering clothing in public places (which goes further than the Dutch bill) in light of the grounds referred to in article 9, paragraph 2 of the ECHR, which are comparable to those listed in article 18, paragraph 3 of the ICCPR (S.A.S. v. France, no. 43835/11, 1-7-2014). The Court ruled that the prohibition served a legitimate aim (public safety, protection of the rights and freedoms of others) and was justified (protection of the rights and freedoms of others, respect for the minimum set of values of an open and democratic society, in particular the requirement of 'living together'). The Court also found the ban to be proportionate (framed in neutral terms, not specifically targeting religious clothing, with sanctions in the lightest category possible). The Court recently affirmed these conclusions in Dahir v. Belgium (no. 4619/12, 11-7-2017).

215. The Dutch bill complies with the requirement that a restriction must be prescribed by law. The ban is also foreseeable (it was announced) and accessible (its provisions are sufficiently accurately formulated and once it has passed into law it will be published in the Bulletin of Acts and Decrees). The legitimate aim of the restriction is to protect the rights and freedoms of others: communication between people at the locations listed is considered extremely important to the quality of services provided and to guaranteeing a safe environment. The legislature is responsible for regulation in this area. Furthermore, the ban on the wearing of face-covering clothing complies with the requirement of a fair balance (i.e. the importance of mutual communication in the places referred to weighs more heavily than the individual interests of a person wearing face-covering Islamic clothing). In a country with a diversity of cultures, religions and ideologies such as the Netherlands, the state is responsible for creating the conditions necessary for a balanced society. Obstacles to mutual communication make contact between people difficult and hinder social participation for everyone. The ban complies with the requirement of proportionality (it is limited to certain places, neutrally formulated, does not specifically target religious clothing and the relevant sanctions are mild). What is more, the prohibition does not limit the practice of a particular religion to the extent that it becomes impossible, since the ban only applies to a few specific locations.

## Peaceful assembly (art. 21)

### Answer to paragraph 29

216. The Public Assemblies Act (WOM) was evaluated in 2015 at the request of the Ministry of the Interior and Kingdom Affairs (BZK). The Act entered into force in 1988 and much has changed since then. Not only are demonstrations much more common and more diverse than in the past, the advent of social media means that they can be organised much more quickly. The organisers are not always known to the municipality or the police, which makes prior consultation difficult. In addition, demonstrations more often attract counter-demonstrations nowadays. Nevertheless, the government concluded from the evaluation that, in general, the Act is still sufficient to meet the challenges these changes present.

217. The basic principle for the local authorities, government and police is that the right to demonstrate is paramount. The overwhelming majority of demonstrations proceed peacefully and cause no problems. However, demonstrators sometimes feel that their rights are too restricted, and in some cases there are clashes with police. The courts and the National Ombudsman have on occasion ruled that the actions of the mayor or the police were unlawful. But sometimes there is simply a difference of opinion between mayor and police on the one hand and demonstrators on the other with regard to striking a balance between guaranteeing the right to demonstrate and maintaining public order. In the government's view, there is no question of large-scale abuse of emergency or criminal-law powers.

218. Nevertheless, the government tries to learn from criticism of its actions. After the wrongful arrest of a woman protesting against the monarchy, the municipality of Amsterdam decided, in collaboration with the national police force, to produce a code of practice on dealing with demonstrations for municipalities and police. The Ministry of the Interior and Kingdom Affairs has promised to explore the scope for making this code available nationwide, for example through meetings for municipalities and police. The National Ombudsman is also drafting a guide on this subject. After a number of incidents, including a demonstration against 'Black Pete' on 12 November 2016, the municipality of Rotterdam and the police are taking steps to review their application of the Public Assemblies Act. In this context, the municipality of Rotterdam held a large meeting on 4 October 2017 attended by Amnesty International and the national and municipal ombudsmen, among others. The Police College also held a seminar on the subject on 22 November 2017.

## Rights of the child (arts. 7, 24 and 26)

**Answer to paragraph 30**

219. The government has taken measures to address the abuse referred to. Two major projects to improve the approach to child abuse were the Task Force on Child Abuse and Sexual Abuse and the Collectives against Child Abuse. The Task Force monitored the performance of the organisations involved in addressing questions and themes on this topic and monitored the action areas in the 2012-2016 child welfare action programme (Actieplan 'Kinderen Veilig 2012-2016). In the final report 'Ik kijk niet weg' (I won't look the other way), the Task Force advised the government to introduce a broad national programme to combat child abuse and domestic violence, with concrete objectives and action points.

220. The Task Force identified ten points of interest. The relevant ministers have decided to work together with municipalities to develop a national programme to strengthen local and regional practice in the field of domestic violence and child abuse.

221. The domestic violence and child abuse protocol for professionals will be tightened up. To this end, amendments to legislation will enter into force on 1 January 2019. The aim is to increase the number of cases involving serious suspicions of child abuse or domestic violence that are reported to 'Safe at Home' organisations (the advisory and reporting centres for domestic violence and child abuse).

222. The Netherlands has taken numerous measures to combat child sexual exploitation and other forms of exploitation of children. In the past seven years, a nationwide action plan combating the activities of 'loverboys' (human traffickers who exploit vulnerable girls by means of a feigned relationship) has been implemented, encompassing various measures aimed at preventing exploitation, prosecuting offenders and protecting victims. These measures range from preventive awareness-raising social media campaigns and intensified prosecution of the clients of child victims of sexual exploitation, to investing in specialised care for youth victims. The Netherlands has prosecutors and judges who specialise in cases of human trafficking, including the exploitation of children.

223. Domestic violence and child abuse are closely linked to difficult social circumstances on Bonaire, St Eustatius and Saba. As yet, domestic violence is not properly registered. In March 2015 a 'Safety House' was launched on Bonaire. Within this community safety partnership, partners in the criminal justice system (including the police, public prosecutor and the probation services) work together with the Guardianship Council and institutions in

the field of health and youth care, welfare, education and social affairs on cases involving elements of both care and safety, such as domestic violence and child abuse. If the evaluation of the Bonaire Safety House indicates that it is effective it may be expanded to St Eustatius and Saba.

224. To improve and strengthen the approach to domestic violence and child abuse a governance agreement (2017-2020) was concluded in 2017 between Bonaire, St Eustatius, Saba and the Netherlands.

225. In November 2017 a conference on domestic violence took place on St Maarten. Its purpose was to step up cooperation between Bonaire, St Eustatius, Saba and the other countries of the Kingdom (Aruba, St Maarten and Curaçao) in this field and to forge a coherent approach to prevention (embracing topics such as the probation service, forensic care, detention, aftercare and ways to tackle domestic violence and child abuse). Efforts to intensify cooperation will continue throughout the period from 2017 to 2020, resulting in the ratification of the Istanbul Convention for Bonaire, St Eustatius and Saba. Exploratory discussions are taking place regarding a pilot project on domestic exclusion orders or a voluntary equivalent, or measures that can produce similar effects. The plan is to develop and detail this approach with stakeholders and to launch the approach at the conference, in order to create broad awareness and support.

**Aruba**

226. Child abuse is an offence under Aruba's Criminal Code. The penalty can be increased by one-third if the abuser is the child's parent. The government and NGOs have conducted campaigns focusing attention on this problem.

227. In June 2016 Bureau Sostenemi, the central advisory, reporting and coordination body on child abuse in Aruba, made an inventory of the basic infrastructure for tackling child abuse, from prevention to aftercare.

228. Where necessary, children are taken to a place of safety and offered care and assistance.

229. In September 2016 supplementary provisions to Aruba's Civil Code were approved by Parliament. These include a statutory basis and mandate for a national advice and reporting centre for child abuse (Book I: Law of persons and family law).

230. There is a statutory ban on corporal punishment in Aruba's schools, and the amended Civil Code prohibits parents from subjecting their children to mental or physical violence or to any other degrading treatment.

# Annex

[*English only*]

## Information on measures taken to implement the recommendations contained in the Committee's previous concluding observations

1. In accordance with rule 71, paragraph 5 of the Human Rights Committee's rules of procedure, the Kingdom of the Netherlands was asked, in paragraph 29 of the concluding observations of the Human Rights Committee (CCPR/C/NLD/CO/4), to provide within one year information on the current situation and on its implementation of the Committee's recommendations in paragraphs 7, 9 and 23. This information has been submitted. This annexe provides information on the remaining recommendations for the Netherlands. As regards the implementation of the Committee's recommendations by Aruba and Curaçao, please refer to the Report on the List of Issues to which this Annexe has been added.

### Paragraph 4 (reservation to article 10)

2. The Kingdom of the Netherlands wishes to maintain its reservation to article 10 ICCPR. For further information see the answer to question 3.

### Paragraph 5 (equal pay for women)

3. The Netherlands aims to increase women's participation and economic independence, and to encourage a healthy balance of work and care. The income-related combination tax credit was introduced to stimulate secondary earners within households (mostly women) to maintain or increase their working hours after childbirth. Other measures include childcare benefit, policies aimed at improving the quality of childcare, various leave arrangements and the Flexible Working Arrangements Act, which entitles employees to request changes to their working hours and work location.

4. Several measures are in place to address the gender pay gap. These include awareness-raising campaigns, specific measures incorporated in the Action Plan against Labour Market Discrimination, steps to promote the active involvement of the 'social partners' (employers' associations and trade unions), progress reports, the establishment of an employment discrimination team at the Inspectorate of the Ministry of Social Affairs and Employment (ISZW), research on equal pay in higher vocational education (HBO), measures in the insurance industry and the establishment of a biennial 'gender pay gap monitor' in the private and public sectors.

### Paragraph 6 (women in public office)

*Within political parties*

5. The basic premise in the Netherlands is that the political parties are responsible for recruiting and nominating candidates for political posts on behalf of the party. The freedom of political parties is one of the fundamental principles underpinning the Dutch democratic system. Figures relating to the number of women among administrators and politicians at local and regional level are published every two years in a report entitled 'State of Government' (Staat van het Bestuur).

6. The Minister of the Interior and Kingdom Affairs, and the Association of Dutch Mayors believe it is important for more women to become mayors, one of the most visible posts in local government. One instrument to achieve this is the mayoral orientation programme, financed by the Ministry of the Interior and Kingdom Affairs. The aim of the programme is to offer promising candidates from other professional backgrounds the opportunity to prepare themselves to apply for a post as mayor.

*Within the Senior Civil Service*

7. The Senior Civil Service (ABD) consists of around 500 of the most senior Dutch civil servants. Between 2007 and late 2013 the proportion of women in the ABD rose from 18% to 29%. By the end of 2016 the proportion of women holding a senior post in government service was 33%.

*In the private sector*

8. The Monitoring Committee noted in its 2016 Companies Monitor that although the proportion of women on management boards and supervisory boards is increasing, the rate of progress is too slow. All of the 5,000 Dutch companies that fall under the extended Management and Supervision Act must work to ensure that more women occupy top-level posts in the near future. To help and inspire these companies, the Minister for Education, Culture and Science, who is the coordinating minister for equal treatment policy, and the president of the Confederation of Netherlands Industry and Employers (VNO-NCW) have sent them a letter and handbook containing information and tips on recruitment and selection procedures. In addition, the Senate agreed in early 2017 that the statutory target for a balanced gender ratio on management boards should be maintained. This means that the 5,000 companies that fall under the Act are obliged to make ongoing efforts to allot 30% of the seats on management and supervisory boards to women. The Act further obliges every company that fails to achieve the 30% target to explain in its annual report why this is so and to set out plans to correct the situation.

**Paragraph 8 (medical experiments involving minors)**

9. On 16 June 2014, a new Clinical Trials Regulation entered into force in the European Union (CTR EU No 536/2014).[a] Once applied, the Regulation will ensure that the rules for conducting clinical trials are identical throughout the EU. It also sets out the latest standards for patient safety in clinical trials in all EU member states, including the Netherlands.

10. The Dutch government was already reconsidering the legislation concerning the participation of minors and incapacitated subjects in non-therapeutic research. In doing so, it took account of both patient safety and the importance of such research to advancing knowledge of disease and enhancing existing treatments or developing new ones for the benefit of the population represented by the subject. The publication of the EU Clinical Trials Regulation was taken into account in the revision of the Dutch Medical Research (Human Subjects) Act.

11. One of the conditions set by the Regulation for non-therapeutic research involving minors is as follows: a clinical trial on minors may be conducted only where there are scientific grounds for expecting that participation in the clinical trial will produce some benefit for the population represented by the minor concerned and such a clinical trial will pose only minimal risk to, and will impose minimal burden on, the minor concerned in comparison with the standard treatment of the minor's condition. In anticipation of the implications for interventional clinical research involving medicinal products, this standard has been adopted by the Netherlands for all types of medical research with human subjects, including trials of medical devices, and observational and social science research. The change entered into force in the Netherlands on 1 March 2017. The revised legislation also conforms to the more detailed description given by the EU clinical trials expert group of the requirements for research involving minors laid down in the revised Ethical Considerations for Clinical Trials on Medicinal Products conducted with Minors, as published in September 2017.

12. With regard to safeguarding consent, the government would like to point out that this is a standard legal requirement in medical research. More importantly, before a minor can participate in medical research, not only is the consent of the parents or legal guardians required (after they have been adequately informed), but from the age of 12 the consent of the minor is also mandatory. If consent for a minor under the age of 12 has been given by the

[a] The Regulation will become applicable in the Netherlands on a date as yet to be determined, possibly in 2019.

parents or legal guardians but the minor in question does not wish to participate, the minor will be excluded from the trial. This ensures that the wishes of a minor, or a person unable to give informed consent, are respected under all circumstances.

**Paragraph 10 (2008 National Security (Administrative Measures) Bill)**

13. The bill has been withdrawn. The grounds for this recommendation therefore no longer exist.

**Paragraph 11 (right to counsel)**

14. The right to legal representation is enshrined in article 6 of the ECHR and article 18 of the Constitution. Under the criminal law, every arrested suspect has the right to speak to a lawyer before being questioned by the police (*Salduz* judgment; ECtHR). For further information see the answer to question 15.

**Paragraph 12 (pre-trial detention)**

15. In its previous concluding observation no. 12, the Committee expressed concern regarding pre-trial detention in the Netherlands. The government therefore wishes to provide a further explanation of the relevant statutory framework and the practical application of pre-trial detention.

16. The term pre-trial detention as used here encompasses both remand in police custody (inverzekeringstelling) and the subsequent stages of pre-trial detention (voorlopige hechtenis). The interests of the investigation constitute the basis for remand in police custody (regulated in article 57 of the Code of Criminal Procedure). The legislature has restricted the application of remand in police custody to criminal offences for which pre-trial detention (voorlopige hechtenis) is permissible (article 58, Code of Criminal Procedure). In general, these are criminal offences carrying a maximum sentence of four years or more. Remand in police custody may be ordered by the public prosecutor or assistant public prosecutor for a maximum of three days and may be extended once for a further three days. The public prosecutor orders the release of the suspect as soon as the interests of the investigation allow this. A relatively large number of suspects (over 50%) are released during remand in police custody or when the remand period ends.

17. Longer periods of detention can be ordered only by the examining magistrate or the courts. The court can make a detention order only if a number of specific statutory criteria have been met (see articles 67 and 67a, Code of Criminal Procedure). There is also a statutory requirement precluding the imposition of pre-trial detention if the suspect is not expected to receive a sentence or non-punitive order depriving them of their liberty, or if the term involved is likely to be shorter than the total period of pre-trial detention. Finally, the Netherlands applies the principle that pre-trial detention should be used with caution, in accordance with ECtHR case law. In principle, suspects remain free while awaiting trial, or alternatives to detention are explored. Such alternatives include electronic monitoring, or suspension or termination of pre-trial detention subject to conditions laid down by the court. These conditions may restrict the suspect's liberty (e.g. if a restraining order is imposed) or oblige them to take part in certain activities or programmes. The figures show that the courts are making increasing use of such alternatives. Pre-trial detention is suspended in around 25% of hearings before the public prosecutor.

18. The judiciary is currently exploring the scope for encouraging the courts to release suspects on bail rather than impose pre-trial detention. The government would also refer the Committee to the Act on the mutual recognition of decisions on supervision measures as an alternative to provisional detention (Bulletin of Acts and Decrees 2013, 250), which entered into force on 1 November 2013 (Bulletin of Acts and Decrees 2013, 309).

19. The need to extend pre-trial detention is periodically reviewed by the courts; at the same time, increasingly strict requirements are imposed with regard to the grounds for detaining the suspect. A detention order may be lifted if there is no longer any suspicion that one of the offences listed in article 67a, paragraph 3 of the Code of Criminal Procedure has been committed or if there are no longer serious grounds for suspicion within the meaning of article 67, paragraph 3 of the Code. In addition, the suspect's personal circumstances such as

a change in their family or work situation can be raised to support the lifting of the detention order. Other arguments that may be put forward include the undesirability of enforcing the order in a police cell, or defects in the order or in the arrest and remand in police custody procedures.

20. The following observations also apply to the use of pre-trial detention. It is correct that the number of individuals in pre-trial detention relative to the total prison population is high, but the following circumstances should be taken into account. The number of people on remand in the Netherlands per 100,000 inhabitants is exactly the same as the European average (35). However, in the Netherlands more short prison sentences are imposed than in other countries, so the share of the total prison population made up of people in pre-trial detention is relatively large. Pre-trial detention is not imposed extremely often or for extremely long periods.

21. A person who has undergone pre-trial detention in criminal proceedings and is no longer a suspect can claim compensation under article 89 of the Code of Criminal Procedure if the criminal case concluded without a sentence or measure being imposed. A fixed daily amount of €80 (or €105 if detention took place at a police station) applies. Suspects can also claim compensation for costs and loss of income under article 591a of the Code of Criminal Procedure.

**Paragraph 13 (witness identity)**

22. The Witness Identity Protection Act contains a provision on questioning the staff of the intelligence and security services. This may take place in the context of an investigation into the reliability of information supplied by these services to ascertain if it can be used in criminal proceedings.

23. During such questioning the rights of the defence may be restricted if this is necessary in the interests of national security. The Act contains effective safeguards to compensate the defence for any restrictions to its rights of defence imposed as a result of this provision. For example, the questioning of a witness whose identity is protected is conducted by the court, which must be informed of the full identity of the witness; the witness must be sworn in; the court must investigate the reliability of the witness's testimony; and the defence must have sufficient opportunity to question the witness. It is acknowledged that such questioning must often take place without the defence being present if the interests of national security so require. To compensate, the Act provides for restrictions on the scope for using in evidence the testimony of a witness whose identity is protected. Furthermore, the court is obliged to provide specific reasoning to underpin the use of such testimony as evidence.

24. In the government's opinion, the above-mentioned legislation provides an adequate basis for the use of information provided by the intelligence and security services in criminal proceedings. If such information is used as a source of evidence in a criminal case, the defence must be given the opportunity to investigate and challenge its reliability, if necessary by summoning witnesses to be heard in court. The Witness Identity Protection Act provides the necessary framework and imposes restrictions on the use of such material in evidence.

**Paragraph 14 (telephone tapping)**

25. There is a general impression that interception of phone communications (tapping) is common in the Netherlands. Every year, the Dutch Parliament receives a report containing the annual figures on telephone interceptions. This data provides information about the number of interceptions carried out in the context of criminal investigations, enabling Parliament to ask questions. The annual total is approximately 25,000. Although the number of taps on landlines in the Netherlands has been stable for many years (around 3,000 in the period from 1993 to 2008), the growth in the use of mobile phones has led to a marked rise in the total number of interceptions, from zero in 1993 to over 20,000 in 2009. There has also been a striking increase in the number of interceptions of internet communications, from 3,331 in 2011 to 16,676 in 2012. The same trend can be observed in a neighbouring country: a study carried out by a research institute speaks of an exponential rise of over 600% in the number of interception warrants issued for telephone tapping in the country concerned between 1998 and 2007. Nevertheless, the number of interceptions carried out in the

Netherlands in recent years has declined slightly, both in absolute figures (a 17% reduction in 2010 compared with 2008) and in relation to the total number of connections in use. The figures show that the number of connections intercepted is less than 0.10% of the total number of telephone connections in the Netherlands.

26. The study referred to above shows that as an investigative tool, telephone tapping is highly valued by the Dutch police and justice authorities and has more than demonstrated its usefulness over time. However, the way in which the information thus obtained is used has changed: in the past it could be used as direct evidence, but today it is increasingly deployed for control and investigative purposes and as indirect evidence. It should be noted that telephone interceptions are registered according to telephone number in the Netherlands and not according to individual or company name, which would allow interception warrants to be combined.

27. The study also showed that the use of mobile phones has grown exponentially in recent years. People whose phones are being tapped frequently change their SIM card or mobile phone. Each time this happens, the agency concerned has to seek a new warrant in order to be able to continue intercepting the suspect's calls. A bill is currently before Parliament that would provide for interception by name. This would allow the public prosecutor simply to note the name of the user in question and the warrant would be issued in that name. In such a case, the warrant – and an authorisation from the examining magistrate – would apply to all numbers used by that person for the duration of the warrant. Studies estimate that only 20% of users have only one telephone number. On the basis of two to four numbers per person, it is expected that once the bill enters into law the number of interception warrants sought will be more than halved.

**Paragraph 15 ('disturbance orders')**

28. The Dutch government is obliged to protect the constitutionally guaranteed rights and freedoms of its citizens. The right to private life is a fundamental right protected by article 10 of the Dutch Constitution, article 17 of the Covenant and article 8 of the ECHR. Infringements of privacy must have a statutory basis and must be subject to strict safeguards. Where measures are necessary in the interests of national security, the government can apply them vis-à-vis individuals only after careful consideration of all the interests at stake. On 1 March 2017, new legislation entered into force within the framework of the plan of action 'An Integrated Approach to Jihadism', extending the government's powers to combat terrorism. For example, it is now possible to impose certain administrative measures (e.g. a banning order, restraining order or requirement to report periodically to the authorities) on individuals who engage in conduct connected with terrorist activities or who provide support for such activities. The law also empowers the authorities to issue a travel ban. Such measures can only be imposed if they are deemed necessary on the grounds of national security. They must further have a legitimate purpose, serve a pressing social need and meet the requirements of foreseeability, proportionality and subsidiarity.

**Paragraph 16 (blasphemy)**

29. In paragraph 16 of the Human Rights Committee's concluding observations on the Netherlands' fourth periodic report, the Committee drew attention to the principle of freedom of expression in connection with the government's intention to remove the article on blasphemy from the Criminal Code and at the same time to revise its anti-discrimination provisions. However, the government has scrapped its plans in this respect. As a result, the grounds for the recommendation no longer apply.

30. It goes without saying that the Netherlands attaches great value to freedom of expression. Whenever the government is preparing legislation that might affect this principle, it takes great care to ensure that the proposed legislation is compatible with article 19 of the Covenant.

**Paragraph 17 (child sexual abuse)**

31. The government takes vigorous measures to combat child abuse. For a detailed explanation of these measures, the government would refer the Committee to the answer to question 30.

**Paragraph 18 (Urban Areas (Special Measures) Act)**

32. The government would refer the Committee to the answer to question 23.

**Paragraph 19 (discrimination)**

33. The government presented its Action Plan against Labour Market Discrimination in May 2014. Information and awareness are key issues. One of the principal measures outlined in the plan is the Diversity Charter. By signing the Charter, organisations commit themselves to an active focus on inclusion and diversity in the work environment. Committed organisations formulate their own goals in their action plans. All government ministries have signed the Diversity Charter. Examples of measures taken include the provision of workshops on 'selection without prejudice' and advice on tapping into alternative recruitment channels. For more detailed information, the government would refer the Committee to the answers to questions regarding discrimination in the main report.

## Bonaire, St Eustatius and Saba (part of the former Netherlands Antilles)

**Paragraph 21 (discrimination against children born out of wedlock)**

34. In connection with the changed constitutional arrangements in Bonaire, St Eustatius and Saba, a new Civil Code for the three islands has replaced the Civil Code of the Netherlands Antilles.

35. When the consolidated text of the new Code was adopted on 27 September 2010, three articles of the Netherlands Antilles Civil Code were reintroduced in Book 4 by mistake. These articles distinguish between children born in and out of wedlock in matters of inheritance law. This distinction was abolished in 1985 and is no longer made in legal practice in Bonaire, St Eustatius and Saba.

36. The text of Book 4 is corrected, bringing it into line with existing practice (through the Security & Justice (Miscellaneous Provisions) Act (Bill no. 33 771), in force since 1 September 2014).